



European
Commission

European network of legal experts in
gender equality and non-discrimination

Country report

Non-discrimination

Greece

2020

including summary



Justice
and Consumers

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.1 Non-discrimination and Roma coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Greece

Athanasios Theodoridis

Reporting period 1 January 2019 – 31 December 2019

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2020

© European Union, 2020

PDF ISBN 978-92-76-19730-0

ISSN 2599-9176

doi:10.2838/065847

DS-BB-20-006-EN-N

CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	11
1 GENERAL LEGAL FRAMEWORK	13
2 THE DEFINITION OF DISCRIMINATION	15
2.1 Grounds of unlawful discrimination explicitly covered	15
2.1.1 Definition of the grounds of unlawful discrimination within the directives	15
2.1.2 Multiple discrimination	17
2.1.3 Assumed and associated discrimination	18
2.2 Direct discrimination (Article 2(2)(a))	19
2.3 Indirect discrimination (Article 2(2)(b))	20
2.3.1 Statistical evidence	20
2.4 Harassment (Article 2(3))	22
2.5 Instructions to discriminate (Article 2(4))	22
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	23
3 PERSONAL AND MATERIAL SCOPE	28
3.1 Personal scope	28
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)	28
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	29
3.1.3 Private and public sector including public bodies (Article 3(1))	29
3.2 Material scope	30
3.2.1 Employment, self-employment and occupation	31
3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))	31
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	32
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	34
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))	35
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	36
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)	38
3.2.8 Education (Article 3(1)(g) Directive 2000/43)	39
3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	44
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)	46
4 EXCEPTIONS	50
4.1 Genuine and determining occupational requirements (Article 4)	50
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	50
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)	51
4.4 Nationality discrimination (Article 3(2))	52
4.5 Health and safety (Article 7(2) Directive 2000/78)	52
4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)	52
4.6.1 Direct discrimination	52

4.6.2	Special conditions for young people and older workers	54
4.6.3	Minimum and maximum age requirements.....	55
4.6.4	Retirement.....	58
4.6.5	Redundancy	61
4.7	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	61
4.8	Any other exceptions.....	61
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....	62
6	REMEDIES AND ENFORCEMENT.....	65
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	65
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	66
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..	68
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	68
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	69
7	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....	71
8	IMPLEMENTATION ISSUES	82
8.1	Dissemination of information, dialogue with NGOs and between social partners	82
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	86
9	COORDINATION AT NATIONAL LEVEL.....	87
10	CURRENT BEST PRACTICES.....	89
11	SENSITIVE OR CONTROVERSIAL ISSUES	92
11.1	Potential breaches of the directives at the national level	92
11.2	Other issues of concern	92
12	LATEST DEVELOPMENTS IN 2019.....	95
12.1	Legislative amendments	95
12.2	Case law	96
12.3	Cases brought by Roma and Travellers	98
ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION		99
ANNEX 2: INTERNATIONAL INSTRUMENTS.....		101

EXECUTIVE SUMMARY

1. Introduction

Greece is a parliamentary republic. Popular sovereignty is the foundation of government, and all powers derive from the people and exist for the people and the nation. The national legislative authority rests jointly with Parliament and the Government. Greece has a civil (continental) legal system, with fields of law separated into specific bodies (civil law, public/administrative law, criminal law, commercial law, labour law etc.). Greece does not have a constitutional court, but all courts of all instances have an inherent obligation to interpret rules and laws in conformity with the Greek Constitution. Greece has three supreme courts: the Council of State (*Συμβούλιο της Επικρατείας*) (for public law), the Supreme Court (*Άρειος Πάγος*) (for private law) and the Chamber of Accounts (*Ειδικό Ελεγκτικό Συνέδριο*) (a limited-jurisdiction administrative court). The Greek Constitution contains fundamental rules on the elimination of all forms of discrimination and the promotion of equality, most of which are contained in Part II, headed 'Civil and Social Rights'. These rights are the principle of human dignity, the free development of one's personality and participation in the financial, social and political life of the country, the principle of equality, the right to health,¹ religious freedom, freedom of speech and the press, the right to legal protection, the protection of personal data, free education, protection of family, marriage and children, protection of people with disabilities, the right to work and equal remuneration. The Constitution does not make any reference to sexual orientation or gender identity. However, according to Article 28, 'generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law'. Therefore, treaties and conventions signed and ratified by Greece that aim to protect individuals from discrimination, based, *inter alia*, on their sexual orientation or gender identity (such as the EU Charter of Fundamental Rights), prevail over national law.² According to Article 25 of the Constitution, the state is obliged to eliminate any existing discrimination. These fundamental rules are applicable to all national fields of law and should always be adhered to. However, special laws have been adopted for each field.

2. Main legislation

In Greek law, there is explicit anti-discrimination legislation: Equal Treatment Law 4443/2016³ on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work. This law replaced the previous main Greek anti-discrimination legislation (Law 3304/2005). The protected grounds under the law are racial or ethnic origin, religious or other beliefs, disability, age and sexual orientation, with chronic illness, descent, family⁴ or social status and gender identity or characteristics having been added. In addition, at the normative level (concerning the rules of the Greek legal system), there

¹ Gender identity is not explicitly mentioned in the text of the Greek Constitution. However, it is considered to derive from the constitutional right of the free development of an individual's personality (Article 5 of the Constitution). See Decision 67/2018 of the Magistrate Court of *Marousi*.

² There is no recorded case law where the courts have applied Art. 21 of the EU Charter (on the protection of sexual orientation) as prevailing over national law.

³ Law 4443/2016 on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions. Abbreviation: Equal Treatment Law (OJ 232 A/ 09.12.2016).

⁴ Whether or not LGBT families are included is an issue of judicial interpretation. Greece recently introduced a law which allows same-sex couples to become foster parents. However, Greece does not permit the adoption of children by same-sex couples, and individuals of the same sex cannot both be considered parents of a child in cases where a child is biologically related to one of them, in which case only the biological parent is registered as the parent.

are many constitutional provisions (mainly setting out general principles) enshrining human rights that directly or indirectly address discrimination.

Nevertheless, it is extremely difficult to derive specific enforceable rights from these general principles. Article 25 of the Constitution is immensely important, because it clearly states that private employers, too, must respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). The Civil Code contains certain *open-ended* clauses which may be invoked by people who have experienced discrimination and are seeking equal treatment and non-discrimination in their working life. However, in practice, such claims are rarely made, except in the employment sector, where the principle of equal treatment is often invoked, but only with regard to equal pay between men and women, not based on the five discrimination grounds. As regards criminal law, there are no provisions outlawing general discriminatory practice, but there are criminal laws prohibiting discrimination on grounds of racial or ethnic origin, although these are never applied in practice.

The sole expressly anti-racism statute in Greece remains Law 927/1979,⁵ as amended.

In addition to Law 4443/2016, Greek labour law consists of numerous statutes that seek to combat discrimination in employment, mainly on the grounds of sex and racial or ethnic origin. For example, there are statutes which outline a protective framework within which employers are obliged to abide by the protective provisions and to eliminate discriminatory practices, such as dismissals of pregnant women or practices related to the race or ethnic origin of the employee.

Greece has ratified all the major human rights treaties (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Child, the European Convention on Human Rights and International Labour Organization Convention No. 111 on Discrimination), as well as the Revised Social Charter, but not Protocol No. 12 to the European Convention on Human Rights or the Framework Convention for the Protection of National Minorities.

On 11 April 2012 Greece ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol through Law 4074/2012 (OG A' 88/11.4.2012), expressing a reservation on the application of Article 27(1).

On 13 September 2017, Law 4488/2017⁶ became part of Greek statute. It includes, *inter alia*, a series of very important provisions regarding the rights of persons with disabilities in Greece. The legislation on the protection of the rights of persons with disabilities (addressed to all stakeholders including government bodies and private employers) introduces a series of reforms designed to promote their equal treatment and full enjoyment of fundamental rights, as well as facilitating their lives and daily routine. At the same time, the regulations promote their treatment not as persons with needs but as persons with potential, which the state must recognise in order to allow them to gain access to every aspect of social and economic life. In particular, any natural person or public organisation in the wider public or private sector is required to facilitate the equal exercising by persons with disabilities of their rights in their respective fields of competence or activity by taking all appropriate measures and refraining from any action which may affect the exercising of those rights. Law 4451/2017⁷ amended the provisions of the

⁵ Law 927/1979 on punishing acts or activities aimed at racial discrimination. Abbreviation: Anti-racist penal Law / Anti-racism Law 927/1979 (OJ 22 A/26.06.1979).

⁶ Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions (OG A 137/13.9.2017).

⁷ Law 4451/2017 on the Modification of the Code of Statute of the Ministry of Foreign Affairs and other provisions (OJA 16/13.02.2017).

internal statute of the Ministry of Foreign Affairs and lifted the upper age limit for accessing the ministry's diplomatic corps. At the same time, it granted employees over the age of 65 (but not beyond the mandatory retirement age of 67) the possibility of staying in the diplomatic service, by analogy with the provisions for officials of other branches of the ministry.

In February 2019, Law 4590/2019⁸ abolished Article 36 of Law 1943/1991,⁹ which stipulated that a public employee could not participate in a programme of post graduate education that would result in the improvement of his/her status within the hierarchy of the public administration if he/she had reached the age of 45 (a maximum age limit). In March 2019, Law 4604/2019¹⁰ abolished the requirement for a minimum period of one year from the awarding of citizenship through naturalisation before a person could be appointed to a public body or employed in a public sector position.

3. Main principles and definitions

Equal Treatment Law 4443/2016 introduced protected grounds such as chronic illness, descent, family¹¹ or social status and gender identity or characteristics. In particular, the introduction of the ground of family status in the field of discrimination in workplaces is regarded as an expansion of the rights of same-sex couples who have signed a civil partnership. This means that only couples who have entered a civil partnership agreement will benefit from protection or benefits under the civil partnership agreement (i.e. through family status). Moreover, certain definitions, which were not provided in the previous Law 3304/2005, have been added.

Article 2 of Equal Treatment Law 4443/2016 contains definitions of 'direct discrimination', 'indirect discrimination', 'harassment', 'discrimination', 'discrimination by association', 'discrimination based on perception', 'multiple discrimination', 'denial of reasonable accommodation' and 'reasonable accommodation'. Equal Treatment Law 4443/2016 does not contain any other definitions on the specific grounds of discrimination. Some terms have been clarified, however, by the Explanatory Report¹² (*Αιτιολογική Έκθεση*) submitted with the draft Equal Treatment Law 4443/2016. No developments took place in 2019 with regard to the principles and concepts covered by this section, including in case law.

⁸ Law 4590/2019 on strengthening the Supreme Council for Personnel Selection, strengthening and upgrading the public administration and other provisions (*Νόμος 4590/2019 για 'ενδυνάμωση του Ανώτατου Συμβουλίου Επιλογής Προσωπικού, ενίσχυση και αναβάθμιση της δημόσιας διοίκησης και άλλες διατάξεις'*) (OJ 17/07.02.2019).

⁹ Law 1943/1991 on the modernisation of planning, the functioning of the public administration, the upgrading of its personnel and other relevant provisions (*Νόμος 1943/1991 'για τον εκσυγχρονισμό της οργάνωσης και της λειτουργίας της δημόσιας διοίκησης, την αναβάθμιση του προσωπικού της και άλλες συναφείς διατάξεις'*) (OJ 50 A/11.04.1991).

¹⁰ Law 4604/2019 on promoting substantial gender equality, preventing and combating gender-based violence – Regulations for the granting of Citizenship – Provisions for Local Government elections – Other provisions of the Ministry of the Interior (*Νόμος 4604/2019 για την 'προώθηση της ουσιαστικής ισότητας των φύλων, πρόληψη και καταπολέμηση της έμφυλης βίας - Ρυθμίσεις για την απονομή Ιθαγένειας - Διατάξεις σχετικές με τις εκλογές στην Τοπική Αυτοδιοίκηση - Λοιπές διατάξεις'*) (OJ 50 A/26.03.2019).

¹¹ As noted above, whether or not LGBT families are included is an issue of judicial interpretation. Greece recently introduced a law which allows same-sex couples to become foster parents. However, Greece does not permit the adoption of children by same-sex couples, and individuals of the same sex cannot both be considered parents of a child in cases where a child is biologically related to one of them, in which case only the biological parent is registered as the parent.

¹² Explanatory Report for the Draft Law on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions. Abbreviation: Explanatory Report on Equal Treatment Law, available in Greek on the Greek Parliament website at: <http://www.parliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/e-odew-eis.pdf>.

4. Material scope

In Greece, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. The personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. Article 3(1) of Equal Treatment Law 4443/2016 clearly states that the principle of equal treatment applies to all 'persons' in the public sector as well as the private sector. As to its material scope, Equal Treatment Law 4443/2016 enshrines Article 3 of the Racial Equality Directive and of the Employment Equality Directive in its own Article 3, which reiterates that the principle of equal treatment shall apply to all persons in both the public and private sectors in relation to (a) conditions for access to employment and occupation in general, (b) access to all types and to all levels of vocational guidance, vocational training and retraining and vocational guidance including practical work experience, (c) employment and working conditions and (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession.

Law 4356/2015, under Article 29, introduced the punishment of perpetrators who treat others with contempt (this corresponds to the term *καταφρόνηση* used in the original Greek legal text) by refusing to provide them with goods and services on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, sexual orientation, gender identity or disability, thus expanding the grounds covered in the field of goods and services. This conduct falls within the scope of criminal law when it takes place in the context of voluntary or humanitarian assistance, usually following a relevant public announcement, and directed only at a specific group of people in a clearly discriminatory manner. The same Law recognised same-sex civil partnerships and eliminated discrimination on the ground of sexual orientation in various fields including employment and social protection.

There were no developments in 2019 with regard to the material scope of the prohibition of discrimination on any of the five grounds, including in case law.

5. Enforcing the law

Article 8 of Equal Treatment Law 4443/2016 enshrines Article 7 of Directive 2000/43 and Article 9 of Directive 2000/78. There are various procedures for enforcing the principle of equal treatment: judicial (under both civil and criminal procedure), administrative, and alternative dispute resolution, such as mediation. In Greece, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Article 8(3) of Law 4443/2016 states that: 'legal persons, unions or organisations including social partners and trade unions, whose purpose also includes the safeguarding of the principle of equal treatment regardless of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics, may represent the injured party before the courts and represent them before any administrative authority or organ, as long as he/she provides in advance his/her consent through a notarial document or private document, which will bear their certified signature'. Moreover, paragraph 4 of the same article further states that the aforementioned legal persons may also intervene in proceedings examining discrimination cases before the civil or administrative courts free of charge (i.e. they do not have to submit a separate court fee).

In Greece, national law requires a full shift of the burden of proof from the complainant to the respondent. This means that the respondent has to prove that the complainant has not been discriminated against (although exceptions apply to criminal procedures, where the burden is partially shifted). The burden of proof in cases where anti-discrimination law has been violated is covered in Article 9 of Equal Treatment Law 4443/2016. In cases of non-compliance with the principle of equal treatment within the framework of an administrative

action, the victim has the protection – in addition to judicial protection – granted by Articles 24 to 27 of the Code of Administrative Procedure.

Protection against victimisation includes such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the workplace, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 10 of Equal Treatment Law 4443/2016). Article 81A of the Greek Criminal Code contains stricter penalties or sanctions for offences committed due to bias motivation.

Article 15 of Law 4356/2015 established a National Council against Racism and Intolerance as an advisory body to improve the consultation process and cooperation among stakeholders and to improve services related to preventing and combating racism and intolerance. Article 17 states that the Council is responsible for the harmonisation of national law and policies with international and European regulations and practice and for the development of initiatives throughout the whole public sector in order to achieve the most effective protection of people and groups who are targeted because of their race, colour, national or ethnic origin, descent, social origin, religious or other beliefs, sexual orientation, gender identity or disability.

Furthermore, a national action plan (the timespan of which is yet to be announced) was to be implemented, with clear qualitative and quantitative indicators. The plan is to progress through the following stages: a) prioritisation of goals and cost, b) observation and update and c) evaluation, and aims to ensure the coordinated combating of racism and intolerance by the state. However, it has not yet been finalised.

On 17 April 2019, a 14-month prison sentence, suspended for 3 years, was imposed by the second Three-Member Misdemeanour Court of Thessaloniki on a doctor who was charged because he had placed an antisemitic sign at a medical office allocated to him under a contract by the Municipality of Thermaikos, in the Nea Mihaniona area of Thessaloniki. The case, which revealed a discriminatory act in providing access to medical services, had been disclosed in 2014 (see Chapter 12.2 below).

There were no other developments in 2019 with regard to the enforcement of anti-discrimination law.

6. Equality bodies

The most important feature of the provisions of Equal Treatment Law 4443/2016 is the unification of separate jurisdictions –private and public – under one equality body, the Ombudsman, which is tasked with the monitoring and promotion of equal treatment, not only for the public sector but for the private sector as well. The General Secretariat for Transparency and Human Rights of the Ministry of Justice, within the framework of its jurisdiction for the protection of human rights and the combating of all forms of discrimination, provides for the promotion of equal treatment. The Social Protection Directorate of the Ministry of Labour monitors the application of anti-discrimination policies in the field of labour and employment, informs employees and employers about issues related to discrimination in the field of employment and raises awareness, as well as providing scientific support to the Labour Inspectorate Body.

There were no developments in 2019 with regard to the mandate, capacity or activities of the national equality body, including in case law.

7. Key issues

The key issues for Greece in the anti-discrimination field can be summarised as follows:

Issues identified regarding the text of Law 4443/2016

- The law has not been amended in order to improve the protection framework (sanctions, damages and procedural aspects) – with the exception of some very limited cases – and under no circumstances does it promote the homogeneity of the various fields of protection. There is a need to establish disciplinary sanctions especially for public servants, as the currently foreseen sanctions in public employment cannot be considered to fulfil the EU law requirement of effectiveness, proportionality and dissuasiveness of sanctions. The administrative sanctions imposed by the Labour Inspectorate Body do not suffice. What is more, discrepancies in the Civil Code need to be addressed, especially concerning the lack of provisions which link non-discrimination law to actions for damages.
- There is concern about the application of the principle of equal treatment in Greece, especially since the economic crisis. Many measures adopted during this period in relation to labour and social security are still in force to this day and are age-related. For example, the minimum age for retirement was extended by a couple of years. These measures can lead to unfavourable treatment based solely on age, since, in practice, younger generations may not have access to employment (given that positions will still be occupied by older persons), and they may constitute direct, non-justifiable discrimination in violation of Directive 2000/78/EC.¹³

Recommended steps for a more effective national anti-discrimination framework

- 1) Provision of independent and specialist assistance by the Ombudsman to victims of discrimination. Furthermore, the Codes of Procedure should be amended in order to provide for the *locus standi* of the Ombudsman as a third party before the civil and administrative courts or as a civil party before the criminal courts.
- 2) Extension of the *ratione temporis* 'jurisdiction' of the Ombudsman over cases which have been filed in the courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim could be deprived of their right to judicial protection. This extension might encourage discrimination victims to have recourse to the Ombudsman and could limit the number of potential cases before the courts, where the procedure is more time-consuming and costly.
- 3) Systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organisation for Mediation and Arbitration (Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ) of developments in employment and occupation, collective agreements, codes of ethics and practices involving combating discrimination.
- 4) The creation, within the Economic and Social Council, of a permanent consultative body composed of representatives of NGOs and organisations in general, with the participation of the Ombudsman, tasked with conducting a social dialogue on equal treatment, together with the plenary body of the Economic and Social Council.

In addition, legislative amendments should be introduced in order to resolve the following issues:

- The requirements for the legal standing of NGOs before the courts should become less strict.
- Modifications must be made to the administrative Code of Procedure relating to the burden of proof.
- Provisions should be made for the imposition of sanctions for all the areas of discrimination protected by anti-discrimination law.

¹³ Κουκούλη-Σπηλιωτοπούλου, Σ. (2014), *Μέτρα λιτότητας στην Ελλάδα και ανθρώπινα δικαιώματα*, ΕΔΚΑ 2014, σελ. 194 και επ. Spiliotopoulou, S. (2014), 'Austerity measures in Greece and human rights: judgments of international bodies, EU Law and examples of Greek jurisprudence', in *Review of social security law 2014*, pp. 173, 181, 182 and 189.

INTRODUCTION

The national legal system

Greece is a parliamentary republic.¹⁴ Popular sovereignty is the foundation of government, and all powers derive from the people and exist for the people and the nation.¹⁵ The national legislative authority rests jointly with Parliament and the Government. Greece has a civil(continental) legal system, with fields of law separated into specific bodies (civil law, public/administrative law, criminal law, commercial law, labour law etc.). Greece does not have a constitutional court, but all courts of all instances have an inherent obligation to interpret rules and laws in conformity with the Greek Constitution. Greece has three supreme courts: the Council of State (*Συμβούλιο της Επικρατείας*) (for public law), the Supreme Court (*Άρειος Πάγος*) (for private law) and the Chamber of Accounts (*Ειδικό Ελεγκτικό Συνέδριο*) (a limited-jurisdiction administrative court).

The Greek Constitution contains fundamental rules on the elimination of all forms of discrimination and the promotion of equality, most of which are contained in Part II, headed 'Civil and Social Rights'.

It is important, however, to highlight that the Constitution declares in Article 28 that the 'generally recognised' rules of international law, as well as international conventions, constitute an integral part of Greek law, which come into force as of the time when they are ratified by statute in Greece, and that they prevail over any contrary statutory provisions. Moreover, 'the rules of international law and international conventions shall be applied to aliens only under the condition of reciprocity'. As a result of Greek accession to the European Communities, EU law has become part of the legal system. As well as the rules contained in primary sources of EU law, which prevail over domestic law, secondary EU legislation, especially regulations, is directly applicable in Greece.

List of main legislation transposing and implementing the directives

- Equal Treatment Law 4443/2016¹⁶ on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work, and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions, which replaced the previous main Greek anti-discrimination legislation (Law 3304/2005).
Adopted by the Greek Parliament: 2 December 2016.
Entered into force: 9 December 2016.
Protected grounds: racial or ethnic origin, religious or other beliefs, disability, age, sexual orientation, chronic illness, descent, family or social status and gender identity or characteristics.
Material scope: all persons in both the public and private sectors; access to employment and occupation (but not self-employment), vocational training and education, social protection, including social security and healthcare, education, and access to goods and services, including housing.

¹⁴ Greek Constitution, Article 1(1). Greece is not a federal state. The text of the Constitution is available in English at: www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma.

¹⁵ Constitution, Articles 1(2) and 1(3).

¹⁶ Law 4443/2016 on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions Abbreviation: Equal Treatment Law (OJ 232 A/ 09.12.2016).

Additional anti-discrimination legislation:

- Anti-racism Law 4285/2014¹⁷ on the amendment of Law 927/1979 (A' 139) and adjustment to Framework Decision 2008/913/JHA of 28 November 2008 to combat certain forms and acts of racism and xenophobia through the Criminal Law (L 383) and others.
Adopted: 9 September 2014.
Entered into force: 10 September 2014.
Protected grounds: race, colour, religion, descent, national or ethnic origin, disability, sexual orientation, gender identity.
Material scope: all persons in both the public and private sectors; violations of the Criminal Code (criminal offences).
- Law 4488/2017¹⁸ on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions.
Adopted: 13 September 2017.
Entered into force: 13 September 2017.
Protected ground: Disability.
Material Scope: Articles 60 to 72 contain provisions transposing the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The provisions apply to all persons in the private and public sectors.

¹⁷ Law 4285/2014 on the Amendment of Law 927/1979 (A' 139) and adjustment to the Framework Decision 2008/913/JHA of 28 November 2008, for combating certain forms and acts of racism and xenophobia through Criminal Law (L 383) and other provisions. Abbreviation: Anti-racism Law (OJ 191 A/10.09.2014).

¹⁸ Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions (OG A 137/13.9.2017).

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Greek Constitution includes the following articles dealing with non-discrimination: Article 4(1), Article 4(2), Article 5(1-2), Article 2(1), Article 9A, Article 16(4), Article 21(1), Article 22(1-2)(b), Article 25(1) and Article 116(2).

The Constitution has always contained a general provision requiring equality for all Greeks before the law (Article 4(1)). In 1975, when the Constitution came into force, one of its important features was the strengthening of human rights.

In its first part, the Constitution assigns to the state the primary obligation to respect and protect the value of the human being. The Constitution also contains a specific and general non-discrimination provision that explicitly protects all people – Greek citizens and foreign nationals,¹⁹ men and women, old and young. In particular, Article 5(1) stipulates: 'All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages [i.e. the principles of morality]. 2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.'²⁰ Therefore, Article 5 of the Constitution is considered as the constitutional basis of all Greek non-discrimination law.²¹

Moreover, according to Article 28 of the Greek Constitution, 'generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law'. Therefore, treaties and conventions signed and ratified by Greece that aim to protect individuals from discrimination based on grounds other than those explicitly mentioned in the Constitution prevail over national law.

The Constitution includes the principles of human dignity²² and the free development of personality;²³ the principle of general equality;²⁴ the right to protection of health;²⁵ freedom of religion; freedom of opinion and of the press; freedom of art, science, research and teaching; the right to judicial protection; the right to be protected against misuse of personal data;²⁶ the right to receive free education on all levels at state educational

¹⁹ The text of the Constitution does not refer explicitly to undocumented migrants and refugees, however it is generally accepted that a minimum of rights are constitutionally protected by virtue of Article 25(1) of the Constitution, (which refers to 'rights of the human being as an individual and as a member of the society') and Article 28 (which refers to the superiority of generally recognised international rules and treaties ratified by the state over national legislation).

²⁰ The above excerpt has been taken from the official English version of the Constitution, as displayed on the Greek Parliament's official website. The term 'good usages' refers to the Greek term *χρηστά ήθη*. A more precise translation of this term would be 'principles of morality'.

²¹ The grounds of disability, age and sexual orientation are considered to be constitutionally protected. However, this protection derives from interpretation under Article 28 of the Greek Constitution (see below). According to this article, treaties and conventions signed and ratified by Greece that aim to protect individuals from discrimination based on these grounds prevail over national law – and not because they are explicitly included in the text of the Constitution.

²² Constitution, Article 2(1).

²³ Constitution, Article 5(1).

²⁴ Constitution, Article 4(1).

²⁵ Constitution, Article 5(5).

²⁶ Constitution, Article 9A.

institutions;²⁷ the right to a family;²⁸ the protection of marriage, motherhood, childhood and families with many children;²⁹ the right to work and to receive equal pay for work of equal value;³⁰ the right to respect of human and social rights;³¹ and the right to enjoy affirmative measures to counterbalance real inequality.³²

These rights and principles cover all the anti-discrimination grounds and material fields mentioned in Directives 2000/43/EC and 2000/78/EC. Theoretically, therefore, nothing would stand in the way of victims of discrimination, regardless of their racial or national origin, religious or other beliefs (disability, age and sexual orientation are also included; although they are not specifically mentioned in the Constitution, they are covered by it by virtue of Article 28)³³ invoking these provisions and attempting to initiate a discussion with a view to promoting social integration and inclusion and combating discrimination through general human rights protection.³⁴ As general principles, such constitutional provisions clearly cover every aspect of human life and personal development, and as such they offer a resource for people who are not protected under other provisions of national law. Even though constitutional anti-discrimination provisions are directly applicable, it would be extremely difficult to derive specific enforceable rights from these general clauses, given that such general clauses are no substitute for more specific legislation which adds clarity and enforceability to individual rights.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional equality clauses can be enforced against private actors (as well as against the state). Article 25 of the Greek Constitution is immensely important, because it clearly indicates that private employers must also respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). This article was added as part of the last constitutional amendment of 2001,³⁵ and it supersedes the previously predominant doctrine that constitutional provisions protect citizens against unequal treatment or discrimination by state entities only and not by employers in the private sector.

²⁷ Constitution, Article 16(4).

²⁸ Constitution, Article 21(1). As previously noted, whether or not LGBT families are included is an issue of judicial interpretation. Greece recently introduced a law which allows same-sex couples to become foster parents. However, Greece does not permit the adoption of children by same-sex couples and individuals of the same sex cannot be considered both parents of a child in cases where a child is related biologically to one, in which case only the biological parent is registered as the parent. In a recent case, the Greek Council of State highlighted that the constitutional protection of the family is not subject to its creation through marriage, but its nature is necessarily affected by social variations in the course of time undergoing development and redefinition (Decision No. 2003/2018 of the 3rd Section of the Council of State).

²⁹ Constitution, Article 21(1–2).

³⁰ Constitution, Article 22(1)(b).

³¹ Constitution, Article 25(1).

³² Constitution, Article 116(2).

³³ Article 28 states that treaties and conventions signed and ratified by Greece prevail over any internal rules. Therefore, this includes treaties and conventions ratified by Greece that aim to protect individuals from discrimination based on these grounds, such as the ECHR as well as the EU Charter of Fundamental Rights, which explicitly refers to grounds of, *inter alia*, sexual orientation, disability and age (Article 21).

³⁴ This has been especially true following the constitutional amendment of Article 25, whereby '[human rights] also apply to the relations between [private] individuals to which they are appropriate' (excerpt taken from the English version of the Greek Constitution).

³⁵ Parliamentary Resolution of 6 April 2001 of the VIIth Revisionary Parliament (OJ 84 A/17.4.2001).

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The provisions of Equal Treatment Law 4443/2016 introduce the following grounds of discrimination: racial or ethnic origin, descent, colour, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, and gender identity or characteristics. 'Gender' is not covered by Law 4443/2016, however gender equality is ensured through other legislation.³⁶

2.1.1 Definition of the grounds of unlawful discrimination within the directives

Certain definitions which were not provided in the previous anti-discrimination law, Law 3304/2005, have now been added through Equal Treatment Law 4443/2016. Equal Treatment Law 4443/2016 does not itself contain any other definitions on the specific grounds of discrimination in its text. Some terms are, however, clarified by the Explanatory Report³⁷ (*Αιτιολογική Έκθεση*), which was submitted with draft Equal Treatment Law 4443/2016. The terms that are provided with a definition under the Greek legal system are set out below.³⁸

a) Racial or ethnic origin

There is a legal definition of 'racial discrimination' in the Greek legal system. According to Article 1(1) of Legislative Decree 474/1970,³⁹ which ratified the International Convention on the Elimination of All Forms of Discrimination (ICERD), 'racial discrimination means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'

Apart from this, there is no other separate legal definition of 'race' or 'racial discrimination' at national level.

There is no separate legal definition of 'ethnic origin' in the Greek legal system. There is no distinction between discrimination based on 'race' and discrimination based on 'ethnic origin' (see above definition included in Decree 474/1970).

³⁶ Mainly through Laws 4097/2012, 3896/2010 and 3769/2009.

³⁷ Explanatory Report for the Draft Law on the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work and Directive 54/2014/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers and other provisions. Explanatory Report on the Equal Treatment Law, available in Greek on the Greek Parliament website at: <http://www.parliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/e-odew-eis.pdf>.

³⁸ Law 4443/2016 also contains the following grounds, which are not mentioned in the Directive:

a) 'family status' was added in order to ensure the equal treatment of people who have entered into a civil union agreement, including same-sex couples only when they have entered such agreements, within the employment field. This is in accordance with Law 4356/2015, which introduced same-sex civil union agreements; and b) Social status, which refers to the 'social stigmatisation' of a person due to his/her link to a certain social sub-group such as former drug addicts or former detainees/prisoners. The Explanatory Report on Equal Treatment Law 4443/2016 states that other types of group are also included, given that they constitute specific social sub-groups consisting of a group of people who are linked by a common characteristic, which is often inherent, unaltered or fundamental to the identity, conscience or exercise of rights of the group's members.

³⁹ Legislative Decree 474/1970 on the ratification of International Convention on the Elimination of All Forms of Discrimination (OJ 77 A/21.03.1970).

b) Disability

There is a legal definition of 'disability' in the Greek legal system. Since the adoption of Law 4074 /2012⁴⁰ by the Greek Parliament on 11 April 2012, the definition (or guidance on the concept)⁴¹ of disability included in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) can be regarded as having been officially transposed into Greek law. This UNCRPD definition also applies in the context of Law 4443/2016. Thus, in this indirect way, the definition can be regarded as compatible with the concept adopted by the Court of Justice of the European Union in joined cases C-335/11 and C-337/11, *Skouboe Werge and Ring*, paragraph 38. There is no national case law in which this definition has been applied. Finally, Law 4488/2017,⁴² which specifies the implementation of the UN Convention on the Rights of Persons with Disabilities, also provides the relevant definitions (of 'disabled people', 'adjustments', etc.) and guidelines for the equal exercise of the rights of people with disabilities and the mainstreaming of disability in all public policies. According to Article 60(1) of Law 4488/2017, 'persons with disabilities' are persons who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, in particular institutional, environmental or social and behavioural barriers, may hinder their full and effective participation in society on an equal basis with others.⁴³

According to the Explanatory Report on Equal Treatment Law 4443/2016, the aforementioned term of 'disability' is further supplemented by the term of 'chronic illness'. This addition aims to expand the protection model for equal access and social inclusion for people with disabilities established through Law 4074/2012 (see above). Thus, chronic illness is also covered by Equal Treatment Law 4443/2016. The term 'chronic illness' includes illnesses that have developed either through a medical condition or due to an accident which presents at least one of the following elements: indefinite duration and no known treatment, rebound effect or possibility of recurrence, permanency, long-term supervision, medical visits and diagnostic examinations, or a need for rehabilitation or special education in order to recover. Within this framework, persons with HIV/AIDS are also protected under the ground of disability or chronic illness, in full conformity with ILO Recommendation 200 (2010), which prohibits discrimination or stigmatisation thereof in employment and occupation.

c) Sexual orientation

Equal Treatment Law 4443/2016, in accordance with Council of Europe Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, contains a coherent prohibition of discrimination based on gender identity or gender characteristics in the field of employment and occupation. However, there is assumed to be an implicit, universally acknowledged definition of sexual orientation.

In its decisions Nos. 47 and 49/2019, the Three Member Court of Misdemeanours of Aigio examined key issues and interpreted a series of terms, including that of 'sexual orientation', in the context of a case of homophobic speech. The court stated that 'sexual

⁴⁰ Law 4074/2012 on the Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol (OJ 88 A/11.04.2012).

⁴¹ 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' (UN Convention on the Rights of Persons with Disabilities, Article 1(2)).

⁴² Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions (OG A 137/13.9.2017).

⁴³ The original text in Greek is: «Ως «Άτομα με Αναπηρίες (ΑμεΑ)» νοούνται τα άτομα με μακροχρόνιες σωματικές, ψυχικές, διανοητικές ή αισθητηριακές δυσχέρειες, οι οποίες σε αλληλεπίδραση με διάφορα εμπόδια, ιδίως θεσμικά, περιβαλλοντικά ή εμπόδια κοινωνικής συμπεριφοράς, δύναται να παρεμποδίσουν την πλήρη και αποτελεσματική συμμετοχή των ατόμων αυτών στην κοινωνία σε ίση βάση με τους άλλους.».

orientation' refers to the characterisation of individuals based on their sexual orientation, which includes heterosexuals, homosexuals and bisexuals (individuals who resort to specific sexual acts or practices are excluded.)⁴⁴

d) Religion and belief

There is no legal definition of religious or other beliefs in the Greek legal system.⁴⁵ Under Article 28 of the Greek Constitution, a definition maybe derived from international treaties or generally accepted international rules.

e) Age

There is no legal definition of the protected ground of age in the Greek legal system. Greek legal scholars and case law have identified discrimination against certain age groups – younger persons (under 24 years) and older persons (over 65 years) – especially in reference to labour law.

2.1.2 Multiple discrimination

Equal Treatment Law 4443/2016 includes the term 'multiple discrimination'. The law clearly defines 'multiple discrimination' in Article 2(2)(g) as 'any discrimination, exclusion or restriction of a person based on multiple grounds of discrimination'. No other concepts related to multiple discrimination have been introduced. Despite this definition, however, the law does not appear to provide for more severe sanctions (or other revised consequences) in cases of multiple discrimination, as opposed to discrimination on one single ground.

Law 3996/2011⁴⁶ on a general reform of the Labour Inspectorate and other provisions on social insurance described in detail the competence and the mission of the inspectorate as an auditor in the protection of workers' and employees' rights. This was the first time that a legislative instrument explicitly referred to multiple discrimination, as well as to discrimination concerning people living with HIV/AIDS (as a special category of disabled persons). Specifically, Law 3996/2011 on the reform of the Labour Inspectorate states clearly in Article 2(1)(h) that '[the Labour Inspectorate] supervises the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation, taking into consideration instances of multiple discrimination in accordance with Article 19 of Law 3304/2005'.

In Greece, there is no case law dealing with multiple discrimination.

The Greek Ombudsman has examined multiple discrimination cases. For example, in 2017 it received a complaint that a newspaper advertisement for the position of secretary at a local association constituted multiple discrimination based on the grounds of gender, age

⁴⁴ Concerning unlawful sexual acts, the court referred to paedophilia as an example, and cited as a justification the findings of the ECtHR in the case of *E.B. v. France* [GC], No. 43546/02, 22 January 2008.

⁴⁵ The Hellenic Constitution recognises the Greek Orthodox Church as the prevailing religion in Greece. Under Article 13 of the Constitution, religious freedom is safeguarded in relation to 'known religions'. For many years there was no definition of 'known religion' until the adoption of Law 4301/2014. This law set the criteria for the recognition of the legal personalities of religious bodies and recognised Islam, the Catholic Church, the Evangelical Church, the Anglican Church, the Ethiopian Orthodox Church, the Orthodox Coptic Church of Egypt and Armenian Orthodox Church. Israeli (Jewish) Communities were first recognised as legal personalities in public law in 1920 through Law 2456/1920, a status maintained until today, with a number of legal texts having been published in the meantime, refining their status. Apart from the Muslim minority of Thrace, which has been recognised as a religious minority under the Lausanne Treaty between Greece and Turkey since 1923, there have only recently been attempts to establish mosques in Greece, such as the Athens mosque, which was inaugurated in the summer of 2019.

⁴⁶ Law 3996/2011 on the reform of the Hellenic Labour Inspectorate, social security issues and other provisions (OJ 170 A/13.08.2011).

and nationality.⁴⁷ The advertisement called for all women under the age of 35 years and of Greek nationality to apply for the position. The Ombudsman contacted the association, notifying its representatives that the advertisement introduced an unjustified discrimination which was prohibited according to Article 11 of Law 3896/2010 and Article 3(1) of Law 4443/2016. In fact, it introduced direct discrimination on the ground of gender by excluding all men from applying for the position and direct discrimination on the ground of age by excluding applicants over the age of 35 years, and it excluded all persons who had not been awarded Greek nationality without clarifying why nationality was crucial for the position in question. Hence, the Ombudsman requested that the advertisement be removed, and the association responded by revoking the advertisement. According to its *2016 Special Report on Equal Treatment*⁴⁸ (covering 2016, published in June 2017), the Ombudsman examined cases of multiple discrimination based on gender and other grounds (age, race and nationality), family status and disability. It highlighted that multiple discrimination cases were prevalent in the private sector. According to the Ombudsman's *2018 Special Report on Equal Treatment*⁴⁹ (covering 2018, published in August 2019), a 45-year-old male psychologist in search of employment came across an employment notice by an orphanage which was seeking a psychologist; however, candidates had to be women under the age of 40. The Ombudsman addressed the orphanage's board of directors, pointing out that these contentious recruitment prerequisites are not justified by the nature and special requirements of the specific position's duties, and requested that the recruitment procedure be repeated. The service cancelled the employment notice and issued a new one, having eliminated the gender and age criteria.

The National Commission for Human Rights (NCHR) had repeatedly highlighted the fact⁵⁰ that Law 3304/2005 (the previous anti-discrimination law) did not include the prohibition of multiple discrimination, noting the need to amend it. With regard specifically to the right of older people, the NCHR noted that the prohibition of multiple discrimination is particularly important. According to the NCHR, older people are often victims of discrimination not only because of their age but also because of their gender, ethnic origin, sexual orientation, nationality, religion or disability. In some cases, indirect gender discrimination and multiple indirect discrimination on the grounds of gender and age are very much possible. One such example, according to the ILO,⁵¹ is that of pension cuts, which will be greater for pensioners under 55 (with a 40 % reduction in pensions above EUR 1 000 per month). The measure might have a strong gender dimension, as this category of pensioners largely consists of women who had the right in the past to take early retirement at 50 if they had completed a certain number of years of service (usually 25) and still had minor children.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Greece, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law. Article 2(2)(f) of Equal Treatment Law 4443/2016 includes 'discrimination based on perception', which is 'the less favourable treatment of a person who is perceived to have specific characteristics of race, colour, national or ethnic origin,

⁴⁷ Greek Ombudsman, *Overview of Intervention February 2017*, available in Greek at: <https://www.synigoros.gr/resources/docs/20170223-synopsi--2.pdf>.

⁴⁸ Greek Ombudsman, *2017 Special Report on Equal Treatment*, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

⁴⁹ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2018), p. 28, available in Greek at: https://www.synigoros.gr/resources/docs/ee_im_2018_en.pdf.

⁵⁰ GNCHR, Decision on the rights of Older Persons, 20.11.2014 (ΑπόφασηΕΔΔΑ, «Προστασία των δικαιωμάτων των ηλικιωμένων ατόμων»), available in Greek at: www.nchr.gr/images/pdf/apofaseis/Hlikiomena_atoma/EEEDA_Ilikiwmena_atoma.pdf.

⁵¹ ILO, *Report on the High Level Mission to Greece* (Athens, 19-23 September 2011), paragraph 321, available at: http://www.ilo.org/global/standards/WCMS_170433/lang--en/index.htm.

descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics’.

There is no case law on discrimination based on perceptions or assumptions of a person’s characteristics.

b) Discrimination by association

In Greece, national law prohibits discrimination based on association with people with particular characteristics. Article 2(2)(e) of Equal Treatment Law 4443/2016 defines ‘discrimination by association’ as ‘the less favourable treatment of a person due to his/her close association to a person or persons with specific characteristics of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics’.

According to the Explanatory Report on Equal Treatment Law 4443/2016, ‘close association’ is defined as the relationship of a person, in particular, with people who fall under the category of ‘familiar’ (οικείων), meaning ‘family members, adopted family members, same-sex partners, betrothed partners, siblings, spouses, or siblings’ spouses/betrothed, custodial parent or a person under someone’s custody’ (using the exact wording of the Explanatory Report). Therefore, this definition is more limited, and it does not seem to be in line with the CJEU’s ruling in the *Chez* case,⁵² which had established that associative discrimination also applies to indirect discrimination – in other words, in a situation where a neutral practice disadvantages people of a specific ethnic group and a person not of the same ethnicity suffers the same disadvantage by association with that group.

According to the Explanatory Report on Equal Treatment Law 4443/2016, a definition on discrimination by association was included in the legislation in order to ensure that Greek law is in line with the judgment in Case C-303/06, *Coleman v. Attridge Law and Steve Law*.⁵³

In Greece there is no case law on discrimination by association.

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Greece, direct discrimination is prohibited in national law and is defined.

- Equal Treatment Law 4443/2016 enshrines the definitions of direct discrimination from both the Racial Equality Directive and the Employment Equality Directive. Article 2(2)(a) states that direct discrimination is the less favourable treatment of a person, ‘due to race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics,’ than that afforded to a person without these characteristics in a comparable situation. Use of the term ‘person’ does not necessarily imply that the scope is limited to individuals.

This definition appears to be in line with the directives. There is no relevant recent case law.

⁵² Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, C-83/14, EU:C:2015:480, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165912&pageIndex=0&doclang=en&mode=req&dir=&occ=first&=1&cid=350201>.

⁵³ Judgment of 17 July 2008, *S. Coleman v. Attridge Law and Steve Law*, C-303/06, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

b) Justification for direct discrimination

Equal Treatment Law 4443/2016 permits the justification of direct discrimination in relation to all grounds. More specifically, this law stipulates that:

- 'The provisions of equal treatment shall not apply to cases which are provided with a 'specifically justified different treatment' (*ειδικώς αιτιολογημένη διαφορετική μεταχείριση*) due to nationality and as long as they do not violate the provisions and preconditions of the legal status of third-country nationals outside the EU or stateless persons living within Greek territory' (Article 3(3)).

The test that must be satisfied to justify direct discrimination basically requires a 'specifically justified difference in treatment' and adherence to provisions on the legal status of third-country national and stateless persons, when referring to nationality. Concerning all grounds, direct discrimination is justified when it is necessary for the maintenance of public safety, ensuring public order, preventing criminal offences and the protection of the rights and freedoms of all. In accordance with the Constitution (Article 25), any measure restricting the rights and freedoms of persons should be applied in light of the principle of proportionality. Therefore, direct discrimination should also satisfy the proportionality test (i.e. a legal measure which satisfies a legitimate aim, through appropriate and proportionate means).

There is no relevant recent case law.

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Greece, indirect discrimination is prohibited in national law and is defined.

Under Article 2(2)(b) of Equal Treatment Law 4443/2016, indirect discrimination is 'when a seemingly neutral provision, criterion or practice places a person with certain characteristics of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation and gender identity or characteristics, in a less favourable position in comparison with other people [without these characteristics].'

There is no relevant case law on prohibition and definition of indirect discrimination.

b) Justification test for indirect discrimination

Article 2(2)(b) of Equal Treatment Law 4443/2016 includes a justification test for indirect discrimination. In its second paragraph it adds: 'There is no indirect discrimination if the provision, criterion or practice is objectively justified by a legitimate aim and the means for accomplishing this aim are appropriate and necessary, if the measures taken are necessary for maintaining public safety, ensuring public order, preventing the commission of crimes, protecting health, the rights and freedoms of others or when [the measures] are taken in favour of people with disability and chronic illness, in accordance with Article 6(5) of the Constitution and Article 5 of the present law'. There is no other relevant jurisprudence or practice on this justification test, although it is in line with Article 25 of the Constitution (the proportionality test).

2.3.1 Statistical evidence

a) Legal framework

In Greece, there is legislation regulating the collection of personal data.

Statistical evidence may be admitted under Greek law in order to establish indirect discrimination.⁵⁴ Specifically, there are national rules permitting data collection. In 2015, a presidential decree was issued which codifies all legislation on access to data. Presidential Decree 28/2015,⁵⁵ which is in force, enshrines the relevant articles of Law 2472/1997,⁵⁶ which regulate the collection of data.

According to Article 25 of PD 28/2015 (formerly Article 7 of Law 2472/1997) regulating data collection:

- 1) The collection and processing of sensitive data is prohibited.
- 2) Exceptionally, the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted by the Personal Data Protection Authority, when one or more of the following conditions occur:
 - Processing relates to data made public by the data subject or is necessary for the recognition, exercise or defence of rights in a court of justice or before a disciplinary body.
 - Processing is carried out exclusively for research and scientific purposes provided that anonymity is maintained and all necessary measures for the protection of the persons involved are taken.

According to Article 21 of PD 28/2015 (formerly Article 2 of Law 2472/1997):

'Sensitive data' shall mean data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a society, association or trade union, health, social welfare and sexual life⁵⁷ as well as criminal charges or convictions.

Statistical data are not used to design positive action measures.

With regard to data processing, Article 24 of PD 28/2015 (formerly Article 5(1) of Law 2471/1997) provides that 'processing of personal data will be permitted only when the data subject has given his/her consent'.

In Greece, statistical evidence is permitted by national law in order to establish indirect discrimination.

In particular, national law does not explicitly prohibit the use of statistical evidence, but at the same time does not expressly allow it. No relevant jurisprudence exists.

b) Practice

In Greece, statistical evidence is not used in practice in order to establish indirect discrimination. The use of statistical evidence is not widespread. The only reluctance to use statistical data as evidence arises from legislation relating to the collection of data. There is no influence from other countries.

There is no relevant case law in this area.

⁵⁴ Statistical data can be used in discrimination cases in general.

⁵⁵ Presidential Decree 28/2015, 'Codification of Provisions for Access to Public Documents and Data', (O.J. 34 A/23.03.2015).

⁵⁶ Law 2472/1997 on the Protection of Individuals in relation to Personal Data Processing (OJ 133 A/10.04.1997).

⁵⁷ Sexual life is not defined in the law, but it is understood as the inter-personal and intimate sexual relations/affairs of individuals in general. This also covers sexual orientation.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Greece, harassment is prohibited in national law and is defined.

According to Article 2(2)(c) of Equal Treatment Law 4443/2016, harassment is considered 'discrimination within the scope of paragraph 1 [prohibited discrimination] as long as it concerns unacceptable behaviour⁵⁸ linked to the grounds of Article 1, which aims to or results in offending a person's dignity and creating an intimidating, hostile, derogatory, degrading or aggressive environment'. Again, the term 'person' does not necessarily imply that only individuals are protected.

Therefore, Article 2(2)(c), in combination with Article 1, prohibits harassment based on all grounds covered by Law 4443/2016 and in all fields.

In Greece, harassment explicitly constitutes a form of discrimination as stipulated in Article 2(2)(c) of Equal Treatment Law 4443/2016, which states that 'harassment falls within the scope of paragraph 1 [discrimination]'.

There is no relevant case law.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Greece, liability is as follows.

First, the scope of liability is narrow. There are no provisions concerning the extension of liability with regard to the actions of employees, third parties, co-workers or clients, members of trade unions or other trade or professional associations. However, under the general civil law (Article 922 of the Civil Code), employers are liable for the actions of their employees. Employees are also liable.⁵⁹

There is no relevant case law.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Greece, instructions to discriminate are prohibited in national law and are defined.

Equal Treatment Law 4443/2016 prohibits instructions to discriminate.

Article 2(2)(d) states that 'any order to the effect of carrying out the discriminatory treatment of a person based on any of the grounds mentioned in Article 1' constitutes discrimination. The term 'order' implies a hierarchical relationship between the instructor and the person who executes the instruction to discriminate (discriminator). This applies to all grounds covered by Law 4443/2016 and to all fields.

National law does not go beyond the requirements of the directives. In Greece, instructions explicitly constitute a form of discrimination under Article 2(2)(d) of Equal Treatment Law 4443/2016.

⁵⁸ This is the exact wording of the legal provisions. It is a matter of judicial interpretation whether the behaviour is unacceptable. There is no available caselaw on the matter.

⁵⁹ Under Article 922 of the Civil Code, when more than one individual is liable for damages suffered during the service of an employee, each individual is liable in whole. Whoever pays the full compensation may afterwards seek compensation from the others who are liable, and the court may decide on the amount to be paid in relation to his/her degree of culpability. If culpability cannot be determined, the parties will pay in equal parts (see also Supreme Court Decision No. 1261/2012).

b) Scope of liability for instructions to discriminate

In Greece, the instructor, in other words the superior ordering a person to carry out an instruction to discriminate, is liable. The discriminator, being the person executing the order, is not liable.

The scope of liability is narrow. There are no provisions concerning the extension of liability with regard to the actions of employees, third parties, co-workers or clients and members of trade unions or other trade or professional associations. As for employees, vicarious liability applies. Therefore, the individual who commits a discriminatory act because they receive an instruction to do so cannot be held liable. This means that employers are liable for discrimination flowing from instructions.

There is no relevant case law.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Greece, the duty to provide reasonable accommodation is included in the law and is defined.

Article 5 of Equal Treatment Law 4443/2016 defines reasonable accommodation as the necessary and appropriate modifications, provisions and measures that should be adopted so as to ensure the equal treatment of people with disabilities or chronic illness, under the condition that none of these measures creates an excessive or unjustified burden for the employer. There is no specific definition of 'reasonable' or of 'disproportionate burden'.

Law 4488/2017 adds, in Article 61, that any natural person or public organisation in the wider public or private sector is required to provide, where necessary in a specific case, reasonable accommodations in the form of tailor-made and appropriate modifications, arrangements and appropriate measures, without imposing any disproportionate or unjustified burden. This article was introduced as an enacting provision for the UNCRPD and supplements the protection offered under Article 5 of the Equal Treatment Law.

The scope of protection was extended after the adoption of the aforementioned Law 4074/2012 by the Greek Parliament on 11 April 2012, which ratified the UN Convention on the Rights of Persons with Disabilities. The right of persons with disabilities to enjoy 'a work environment that is open, inclusive and accessible' to them, as defined in Article 27(1) of the Convention, is guaranteed, and therefore a claim for reasonable accommodation on their behalf is protected under Greek law.

Moreover, there is judicial precedent concerning the definition of disability for the purposes of claiming reasonable accommodation, in that the courts rely on medical evidence of a disability in order to determine its existence. The courts have a long-term practice of not resorting to a definition in order to see whether a person is disabled. Instead, they rely on the medical evidence submitted by the applicant (disabled person) with their case file, which classifies the grade of disability. This is taken as proof of the existence of a disability, and therefore the court does not need to resort to a definition in order to determine the individual's disability.

For example, an applicant before the Athens Court of First Instance, a bank employee with disabilities, contested her transfer to another bank branch which was a long way from her home. The court investigated whether other employees with the same qualifications were available to work at that bank branch. When the court verified that there was such

availability, it ruled against the bank (Judgment 2048/2008)⁶⁰ and found that it had improperly (*καταχρηστικά*) requested the applicant's transfer. The court did not take the opportunity provided by this case to provide a clear definition of disability, and instead relied on medical evidence, which established a 55 % disability in order to apply Article 10 of Law 3304/2005 (which was the applicable provision at the time). Since the adoption of the CRPD, there have been no decisions related to discrimination, disability and reasonable accommodation.⁶¹ Therefore, it is impossible to determine whether this practice (using medical evidence to determine the existence of a disability) is still being employed by the courts.

Furthermore, Judgment 2048/2008 appeared to confuse the duty to provide reasonable accommodation with the general rule of non-discrimination.

There is no relevant case law.

b) Practice and case law

Article 5 of Equal Treatment Law 4443/2016 sets out that providing reasonable accommodation shall not entail a disproportionate (i.e. 'excessive and unjustified') burden when it is sufficiently remedied by measures existing within the framework of disability policy.

There is no specific definition of 'reasonable', of 'disproportionate' or of 'unjustified burden'.

As for the availability of financial assistance from the state as a factor to be taken into account in assessing whether there is a disproportionate burden, Article 5 of Equal Treatment Law 4443/2016 provides that, in such cases (where financial assistance is provided by the state), accommodation cannot be regarded as a disproportionate burden.

According to the Greek Ombudsman's *2019 Special Report on Equal Treatment*,⁶² in most of the cases it examined in 2019, it found that the measures or reasonable adjustments that had to be taken by companies to ensure that all employment conditions were appropriate for all employees were simple and almost self-evident. Nevertheless, several companies seemed reluctant to adopt even such simple measures, which would undoubtedly make it easier for their employees and would certainly contribute to a more positive climate of cooperation between employees and their employers.

One indicative case concerned an employee who complained to the Ombudsman because, in the large department store where she worked as a saleswoman, there were no seats for a short break when conditions allowed, in accordance with the relevant provisions of labour law.

The Ombudsman, acting within its competence as a national body for combating discrimination due to disability or chronic illness, but also as a body for the promotion, protection and monitoring of the implementation of the United Nations Convention on the Rights of Persons with Disabilities, examined the case in a broader way and taking into account the fact that prolonged standing has an impact on health.

In this context, the Ombudsman forwarded the complaint to the Department of the Inspectorate for Occupational and Health Safety, in order for it to take action, and

⁶⁰ Single-Member First Instance Court of Athens, case 2048/2008, *ΕΕρΔ 2008*, 1514 (hereafter Judgment 2048/2008).

⁶¹ In Greece, court decisions are not publicly available, due to data protection reasons. There are, however, subscribers' databases, which publish redacted decisions. These decisions have been submitted by the lawyers involved in given cases on a voluntary basis. Therefore, it is impossible to have access to every decision in order to determine whether a definition has been introduced in light of the *Ring* case.

⁶² Greek Ombudsman, *Special Report on Equal Treatment 2019*, available in Greek at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

requested to be kept informed. Moreover, it highlighted the particular importance of carrying out inspections on the issue of employees standing for prolonged periods, not only at the specific store but in general.

The Inspectorate carried out an inspection and informed the company that there should be seats available. Following a re-investigation, the Inspectorate found that there were still no seats and imposed administrative sanctions (case 260649).

The Ombudsman intends to monitor the issue in cooperation with the Labour Inspectorate Body (SEPE) in the context of the audits it carries out, in order to ensure that the relevant adjustment is provided for all employees.

There is no relevant case law in this area.

c) Definition of disability and non-discrimination protection

In Greek non-discrimination law, disability is a protected characteristic (Article 1, Equal Treatment Law 4443/2016), yet there is no definition of disability other than that it includes 'chronic illness'. Through the incorporation of the UNCRPD into Greek law and, more specifically, under Article 27(1) of Law 4074/2012 (which corresponds to Article 27(1) of the CRPD), a person who is protected against discrimination on the ground of disability necessarily has the right to reasonable accommodation if he or she needs it (in the context of employment). The original text in Greek refers to 'disability or chronic illness' as a single ground of discrimination. Yet, according to the Explanatory Report on Equal Treatment Law 4443/2016, the aforementioned term of 'disability' is in fact further supplemented by the term of 'chronic illness'. This supplement aims to expand the protection model for equal access and social inclusion for people with disabilities that was established under Law 4074/2012 (see above). It therefore appears that 'chronic illness' is a category of disability. Further judicial interpretation will be necessary in order to clarify the relationship between these two terms. The aforementioned report states, however, that the term 'chronic illness' includes illnesses that have developed either through a medical condition or due to an accident, and that at least one of the following elements are present: indefinite duration and no known treatment, rebound effect or possibility of recurrence, permanency, long-term supervision, medical visits and diagnostic examinations, or a need for rehabilitation or special education in order to recover. Within this framework, persons with HIV/AIDS are protected under the ground of disability or chronic illness, in full conformity with ILO Recommendation 200 (2010), which prohibits discrimination or stigmatisation thereof in employment and occupation. Finally, Law 4488/2017,⁶³ which specifies the implementation of the UN Convention on the Rights of Persons with Disabilities, also provides the relevant definitions (of 'disabled people', 'adjustments' (as noted above), etc.) and guidelines for the equal exercise of the rights of people with disabilities and the mainstreaming of disability in all public policies. According to Article 60(1) of Law 4488/2017, 'persons with disabilities' are persons who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, in particular institutional, environmental and social and behavioural barriers, may hinder their full and effective participation in society on an equal basis with others.⁶⁴ The definitions of disability for the purposes of non-discrimination law and reasonable accommodation are the same, this definition having been inspired by the CRPD.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

⁶³ Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions (OG A 137/13.9.2017).

⁶⁴ The original text in Greek is: 'Ός «Άτομα με Αναπηρίες (ΑμεΑ)» νοούνται τα άτομα με μακροχρόνιες σωματικές, ψυχικές, διανοητικές ή αισθητηριακές δυσχέρειες, οι οποίες σε αλληλεπίδραση με διάφορα εμπόδια, ιδίως θεσμικά, περιβαλλοντικά ή εμπόδια κοινωνικής συμπεριφοράς, δύναται να παρεμποδίσουν την πλήρη και αποτελεσματική συμμετοχή των ατόμων αυτών στην κοινωνία σε ίση βάση με τους άλλους.'

In Greece, failure to meet the duty of reasonable accommodation constitutes direct discrimination. This can be derived from the Explanatory Report to Law 4488/2017, which introduced provisions for persons with disabilities.⁶⁵

In particular, according to Judgment 2048/2008 of the Athens Court of First Instance, failure to meet the duty of reasonable accommodation counts as direct discrimination. In fact, the court did not consider 'reasonable accommodation' as a separate notion or provision. Instead, it examined the case as a form of direct discrimination. Therefore, even though the court found that there had been direct discrimination, the claim of the applicant to be entitled to reasonable accommodation was not accepted as such.

For this type of discrimination there is no defence or justification other than on grounds of disproportionate burden.

There is no specific separate sanction for failure to meet the duty of reasonable accommodation. Instead, as derived from the aforementioned court decision, this is interpreted as direct discrimination, thus applying the sanction of the relevant provision. The general sanction for a direct form of discrimination, according to Article 11 of Equal Treatment Law 4443/2016, is provided by Law 3996/2011 (Article 24 on the violation of employment law) and concerns administrative sanctions for employers that include a fine ranging from EUR 300 to EUR 50 000 and a temporary suspension of the employer's business for three days.

Equal Treatment Law 4443/2016 also includes a provision for a reversal of the burden of proof in Article 9:

'When the injured party claims that the principle of equal treatment has not been upheld and he/she proves before the court or administrative authority the facts which can support a direct or indirect discrimination, then it is the burden of the contesting party or administrative authority to prove that there were no conditions supporting a violation of this principle.'

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Greece, there is no duty to provide reasonable accommodation for people with disabilities outside the employment field. However, such a duty could derive from the UNCRPD, which has been incorporated into Greek law.

The ratified UNCRPD may, by virtue of Article 28 of the Greek Constitution, be regarded as a legal basis for more opportunities regarding reasonable accommodation (e.g. in education or health), but its relevance to the issue remains unclear until there is case law on the matter.

Fields other than employment and education are not included in the relevant article, Article 5 of Equal Treatment Law 4443/2016.

There is no case law in this regard.

- f) Duties to provide reasonable accommodation in respect of other grounds

In Greece, there is no duty to provide reasonable accommodation in respect of any other grounds (race or ethnic origin, religion or belief, age or sexual orientation) in either the public sector or the private sector. There is no information concerning 'chronic illness',

⁶⁵ Explanatory Report to Law 4488/2017, pp. 25-26, available in Greek at: <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/s-syndas-eis-%CE%BF%CE%BB%CE%BF.pdf>.

which was added through Equal Treatment Law 4443/2016. However, given that Law 4443/2016 refers to 'disability or chronic illness' as a single ground, chronic illness should be covered by the duty to provide reasonable accommodation.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Greece, the following residence, citizenship and nationality requirements are applied for protection under the relevant national laws transposing the directives.

There is only one uniform law, Equal Treatment Law 4443/2016, that transposes the directives; its provisions apply to everyone in both the public and private sectors. This law does not provide for any restriction related to residence. However, in Article 3(3), the law contains a restriction related to citizenship/nationality requirements, since it stipulates that it does not cover differences of treatment based on nationality, for example in the exercise of the general interest of public authorities or the state (Law 2431/1996 on the appointment or employment of EU nationals in the public administration),⁶⁶ and it is without prejudice to provisions and conditions relating to the entry and residence of third-country nationals or stateless persons on Greek territory or to any treatment which arises from the legal status of third-country nationals and stateless persons. Furthermore, Law 2431/1996 provides that the precondition of Greek nationality is not included among the other prerequisites for the employment of EU nationals. According to Article 1, the only exemption allowed requires that nationals of other Member States are employed in positions where the duties and competences do not result in direct or indirect participation in the exercise of the general interest of public authorities, the state or other public sector interests.

It has already been noted that foreign nationals are entitled to the same rights as Greek nationals under the applicable law, pursuant to rules allowing foreign nationals to choose whether Greek law applies or not. Many bilateral treaties signed by the Greek State also call for national or most-favoured-nation treatment of foreign nationals. According to Law 1975/1991 on the entry, departure, stay, employment and deportation of aliens, an 'alien is any person who does not have Greek nationality or a person who is not indigenous'.⁶⁷

Presidential Decrees 358/1997 and 359/1997⁶⁸ confer equal employment rights on Greek citizens and all foreign nationals legally working in Greece, with no discrimination, racial or otherwise. Furthermore, Article 4 of the Civil Code stipulates that foreign nationals enjoy the same civil law rights as Greek nationals.⁶⁹

From this general legal principle, it has been concluded in Greek law that foreign nationals legally employed or working in Greece are subject to Greek labour law under the same conditions as Greek nationals (Article 3(1)(a) and (c) of the Directive). Law 1876/1990⁷⁰ on free collective bargaining covers everyone employed in the private sector.⁷¹ However,

⁶⁶ Law 2431/1996 on the appointment and hiring of EU citizens in the public sector (OJ 175 A/ 30.07.1996).

⁶⁷ Law 1975/1991 on the entrance, exit, stay, employment and deportation of aliens, the procedure for the recognition of refugees and other provisions (OJ 184 A/04.12.1991). In 1997 the Greek Manpower Employment Organisation (OAED) initiated a long-term 'Operational Programme to Combat Exclusion from the Labour Market', covering 'immigrants from third countries, refugees, persons repatriated from Western European countries, persons repatriated from countries other than Western European countries, Pomaks and Roma'. The beneficiaries of this project include 'unemployed persons or persons with no steady employment'. The project aims to provide vocational training and to facilitate access by the above groups to the labour market.

⁶⁸ Presidential Decrees 358/1997 and 359/1997 on the registration and legalisation of aliens (OJ 240 A/01.03.1997).

⁶⁹ Article 4 does not explicitly refer to the legal status of migrants, and there is no guarantee that irregular migrants will not be treated differently.

⁷⁰ Law 1876/1990 on free collective negotiations and other provisions (OJ 27 A /08.03.1990).

⁷¹ Ληξουριώτης, Ι. (1998) *Το νομικό καθεστώς του μετανάστη μισθωτού στην Ελλάδα*, Αντ. Ν. Σακκουλάς 1998 (Lixouriotis, G., *The legal status of the immigrant worker in Greece*).

Greek labour law contains provisions which are discriminatory to migrant workers, such as those regarding compensation for accidents at work. According to the Decree of 24 July/25 August 1920 (as amended), compensation due to foreign workers is dependent on various conditions such as their residence in Greece.⁷² According to the same law, foreign workers are entitled to the same treatment as nationals on condition that there is reciprocity between Greece and their respective countries of origin by virtue of relevant inter-state agreements. These provisions raise serious questions of compatibility between the above Greek legislation and the international social rights standards established, *inter alia*, by the International Covenant on Economic, Social and Cultural Rights.

Finally, Article 19 of Law 4358/2016⁷³ protects the rights of migrant workers and their families by ensuring their protection and assistance, particularly in obtaining accurate information, through the adoption of measures that will secure treatment for such workers that is no less favourable than that given to Greek nationals.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Greece, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination (Article 8 of Law 4443/2016).

There is no relevant case law.

b) Liability for discrimination

In Greece, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Law 4443/2016 does not distinguish between natural and legal persons as far as liability is concerned. Article 3(1) of the law merely uses the term 'persons' with no other specific reference. It is obvious that both natural and legal persons are liable when discrimination derives from them.

There is no relevant case law.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Greece, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. Article 3(1) of Equal Treatment Law 4443/2016 clearly states that the principle of equal treatment applies to all 'persons' (natural and legal) in the public sector as well as the private sector. The national provisions comply with the directive.

There is no special reference in the law.

There is no relevant case law.

⁷² Ληξουριώτης, Ι. (1998) *Το νομικό καθεστώς του μετανάστη μισθωτού στην Ελλάδα*, Αντ. Ν. Σακκουλας 1998 (Lixouriotis, G., *The legal status of the immigrant worker in Greece*). See also Council of State judgments 2599/1982, 2637/1982 and 1318/1990, affirming the above, as reported in the UNHCR *Yearbook of refugee and aliens law* 1999, pp. 160–166 (GYRAL) (Υπατη Αρμοστεία Ηνωμένων Εθνών για τους Πρόσφυγες, *Επετηρίδα Δικαίου Προσφύγων και Αλλοδαπών* 1999). See also Auditors Court judgment 1617/1998, affirming the right of the alien widow of a Greek citizen, a former public servant, to receive the pension of her deceased husband, reported in GYRAL, p. 182.

⁷³ Law 4358/2016 on the ratification of the Revised European Social Charter (OJ 5 A/20.01.2016).

b) Liability for discrimination

In Greece, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

Law 4443/2016 does not distinguish between the private and public sectors where liability is concerned. Article 3(1) of the aforementioned law specifically refers to the private sector as well as the public sector.

There is no relevant case law.

3.2 Material scope

Article 3 of Law 4443/2016 states:

- '1. Without prejudice to paragraphs 3 and 4 of this Article, as well as Article 4, the principle of equality regardless of race, colour, national or ethnic origin, creed, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, identity or gender characteristics in all areas of work and employment, applies to persons, in the public and private sector, as regards: a) the terms of access to work and employment in general, including the selection criteria and the terms of employment, regardless of the field of activity and at all levels of the professional hierarchy, as well as the terms of service and professional development, b) access to all types and levels of vocational guidance, apprenticeship, vocational training, training and vocational guidance, including the acquisition of practical professional experience, (c) the terms and conditions of employment and occupation, in particular with respect to remuneration, dismissal, health and safety at work and, in the event of unemployment, reintegration and re-employment, (d) the status of a member and participation in a trade union organisation of workers or employers or in any professional organisation, including the advantages and obligations arising from participation in them, and in particular the right to vote and be elected.
2. Subject to paragraphs 3, 4, 6 hereof, as well as Article 4, the principle of equal treatment regardless of race, colour, national or ethnic origin or creed shall apply to all persons, in the public and private sector, and in terms of:
 - a) social protection, including social security and health care,
 - b) social benefits and tax facilitations or benefits,
 - c) education,
 - d) access to and distribution of goods and services available (transactional) to the public, including housing.
3. The provisions of this Chapter shall not apply in cases where special reasonably different treatment is provided for nationality and do not affect the provisions and conditions of the legal status of third-country nationals outside the European Union or of stateless persons living in the State.
4. The provisions of this Chapter concerning the principle of equal treatment regardless of religion or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, identity or gender characteristics shall not apply to all types of benefits offered by public systems or equitable systems, including public social security or welfare systems and do not affect measures necessary to maintain public safety, ensure public order, prevent criminal offences, protect health and protect the rights and freedoms of others.
5. The provisions of this Chapter shall not apply to the armed forces with regard to different treatment due to age, disability or chronic illness related to the Service.
6. The provisions of this Chapter on the provision of tax facilitations or benefits shall not apply to persons whose tax residence is located outside the European Union.'

3.2.1 Employment, self-employment and occupation

In Greece, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for the five grounds.

As to its scope, Equal Treatment Law 4443/2016 enshrines Article 3 of the Racial Equality Directive and of the Employment Equality Directive in its own Article 3.

There is relevant case law, especially on the introduction of age limits, under which such restrictions in the armed forces, the fire service, the placement of judges and so on constitute discrimination based on age.⁷⁴

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Greece, national legislation prohibits discrimination in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both the private and public sectors, as described in the directives.

The relevant provisions are Articles 3(1)(a) and 4(1) of Equal Treatment Law 4443/2016. With regard to case law, please refer to the section above (3.2.1).⁷⁵

It is noteworthy that the Greek Ombudsman, in advisory opinion No. 236691/52486/2017, which was published on its website on 28 March 2018,⁷⁶ assessed the competition notice issued by the Ministry of Foreign Affairs (No.P19GEN - 34379) on the recruitment of five experts, according to which the participation of candidates was excluded when: (a) they had become Greek citizens through the process of naturalisation, but three years had not yet passed since their acquisition of Greek nationality; (b) they were not yet 32 years of age; (c) or they suffered from serious cardiovascular, respiratory, nephrological or contagious diseases or serious disorders of the nervous system.

The Ombudsman drew the Ministry's attention to the fact that differential treatment which relies on one of the protected characteristics, as provided in Equal Treatment Law 4443/2016 (ethnic origin, age and disability), is considered to be permissible only if that characteristic constitutes a substantive and critical professional prerequisite for the nature or context of the person's specific professional activities, and on condition that the specific aim is legitimate and this prerequisite is proportional. Possible derogations from the principle of equality, deriving from the specific provisions on the competence or the terms for recruitment in the Specialist Sector, must be interpreted and applied in compliance with the principle of equal treatment. Otherwise, they must be considered to be repealed. The Ombudsman considered that imposing a three-year condition on candidates following their acquisition of Greek nationality in order for them to participate in the above-mentioned competition was against the principle of equal treatment, since it created differential treatment among Greek citizens. On 19 March 2019, the Greek Parliament passed Law

⁷⁴ Decisions before the Council of State Nos. 1421/2005, 413/1993 (Plenary), 1844/1994, 3354/1996, 2325/2002 255/2003, 594/2003, 3133/2004, 3444/2004, 3786/2007, 1319/2008, 1146/2010 and 2365/2010, available at: http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?_adf.ctrl-state=sfspw8mbt_4&_afLoop=4159591819940474#.

⁷⁵ Decisions before the Council of State Nos. 1421/2005, 413/1993 (Plenary), 1844/1994, 3354/1996, 2325/2002 255/2003, 594/2003, 3133/2004, 3444/2004, 3786/2007, 1319/2008, 1146/2010 and 2365/2010, available at: http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?_adf.ctrl-state=sfspw8mbt_4&_afLoop=4159591819940474#.

⁷⁶ <https://www.synigoros.gr/resources/docs/20180328-synopsi.pdf>.

4604/2019,⁷⁷ which includes a major change with regard to the equal treatment of Greek citizens as far as origin is concerned. Specifically, Article 47(1) of the new Law abolished the requirement for a minimum period of one year from the awarding of citizenship through naturalisation before a person could be appointed to a public body or employed in a public sector position.

As for the minimum age limit set out in the competition notice, the Ombudsman highlighted that any differential treatment on the ground of age must be specifically justified, that the age limit must be objectively necessary for the realisation of the legitimate aim pursued, and that there should be no alternative, less strict measure for the achievement of this aim. Therefore, the Ombudsman considered that the age limit was not justified.

As a conclusion in its *2017 Report on Equal Treatment*⁷⁸ (covering 2017, published in December 2018), the Ombudsman clearly highlighted the point that open calls for competitions constitute the source of a series of problems that present incompatibility with the provisions of equal treatment law and the fight against discrimination, because they often include terms and conditions (such as age limits) that are incompatible with anti-discrimination legislation.

Finally, as far as the exclusion on grounds of specific diseases is concerned, the Ombudsman supported that the conclusion on whether candidates are healthy and physically suitable for the duties they are to undertake must be the outcome of an ad hoc medical assessment, using the procedure prescribed under the Staff Code. Furthermore, it is doubtful whether the collection and processing of the candidates' health data will be in compliance with the legislation on the protection of sensitive personal data, in that data collection of this sort is not necessary for the assessment of candidates' suitability. For all the above-mentioned reasons, the Ombudsman requested an immediate review of the terms of the competition notice in order for them to comply with equal treatment legislation. The ministry responded that it would take these remarks into account in the context of the ongoing amendment of the provisions of its organic law.

According to the Ombudsman's *2018 Special Report on Equal Treatment* (covering 2018, published in August 2019),⁷⁹ an unemployed individual seeking employment in a coffee shop called an employer who had posted an advert on a job search website. Upon being asked by the employer about her age, to which she replied that she was over 35 years of age, he hung up the phone. The Ombudsman ascertained that the employer was unaware of the anti-discrimination law on access to employment and provided them with a relevant recommendation and extensive information (case 241504). In addition, the Ombudsman approached the company that had published the ad and collaborated with it effectively. Based on this case, the Ombudsman concluded that the search for employees through classified ads using terms contravening the provisions and the purpose of the law on equal treatment regarding access to employment constitutes a generalised practice which is considered discriminatory.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Greece, national legislation covers working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

⁷⁷ Law 4604/2019 on promoting substantial gender equality, preventing and combating gender-based violence – Regulations for the granting of Citizenship – Provisions for Local Government elections – Other provisions of the Ministry of the Interior (Νόμος 4604/2019 για την 'προώθηση της ουσιαστικής ισότητας των φύλων, πρόληψη και καταπολέμηση της έμφυλης βίας -Ρυθμίσεις για την απονομή Ιθαγένειας – Διατάξεις σχετικές με τις εκλογές στην Τοπική Αυτοδιοίκηση -Λοιπές διατάξεις') (OJ 50 A/26.03.2019).

⁷⁸ Greek Ombudsman, *2017 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2017), p. 51, available in Greek at: https://www.synigoros.gr/resources/docs/internet_metax_2017_eng.pdf.

⁷⁹ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2018), p. 27, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

The relevant article is Article 3(1)(c) of Equal Treatment Law 4443/2016.

Presidential Decrees 358/1997 and 359/1997, which introduced a specific category of residence permits for foreign workers, have since been repealed under Article 65(2) of Law 2910/2001. However, they are considered to be important, as they first inaugurated equal rights, and the substance of these provisions has been successfully transferred to Law 2910/2001 (Article 39). Finally, Law 1556/1985⁸⁰ on the ratification of the International Labour Organization Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) of 1983 declares the principle of equal opportunities for disabled employees and employees in general and for male and female employees. In addition, under the provisions of Law 2639/1998, employers in breach of non-discrimination legislation are liable to administrative fines and may be taken to court.

In March 2018 the Greek Ombudsman pointed out that PD 27/1986 introduced indirect discrimination on grounds of disability and chronic illness. The decree burdened the employee who had been absent from work for reasons of disability or chronic illness with an obligation to wait for a period of six months after returning to work in order to be granted a regular leave of absence. Therefore, according to the Ombudsman, the exercise of a fully guaranteed right such as the right to regular leave appeared to be dependent on coincidental or unpredictable factors such as sick leave related to disability or chronic illness.

The Ombudsman went on to mention that the purpose of regular leave is different from that of sick leave, since the latter is for the purpose of employees recovering their health.

The Greek Police fully adopted the opinion of the Ombudsman and proposed a legislative amendment to the Government such that the right to regular leave could not be restricted for employees who happened to have been absent from work on sick leave. Article 3 of Presidential Decree 10/2018 abolished Article 2(5)(2) of Presidential Decree 27/1986

In early April 2019, the Hellenic Labour Inspectorate, having received a relevant opinion by the Greek Ombudsman,⁸¹ which recommended the imposition of the prescribed administrative sanctions in accordance with Article 24 of Law 3996/2011 on the reformation of the Hellenic Labour Inspectorate,⁸² imposed a fine against a private company for the dismissal of an HIV positive employee. One month after being hired, while undergoing training to acquire the relevant certificate as a cargo inspector, the employee concerned was hospitalised. He was then diagnosed as HIV positive, of which he informed his employer, as he would consequently need to be absent from work for several months. Although he claimed that he initially received effective treatment, which showed that his health would improve, he was informed by the company's representative two months later that two people had been hired for training in the same area of expertise and that there was no work for him to be assigned to.

According to the Ombudsman's *2019 Equal Treatment Report*,⁸³ the Ombudsman received a complaint that a worker with a disability (who needed to use a wheelchair) was hired on an eight-month employment contract under a public benefit programme run by OAED (the Manpower Authority) in a municipality. Although the municipality's administration was aware of the difficulties faced by the employee when speaking and moving his hands, they assigned him, at his own request, a job at a call centre which, due to his disability, he was

⁸⁰ Law 1556/1985 on the ratification of ILO Convention 159/83 on vocational rehabilitation and employment (disabled persons) (OJ 167 A/30.09.1985).

⁸¹ Greek Ombudsman, Case 20191104, available in Greek at: <https://www.synigoros.gr/resources/20191104-porisma.pdf>.

⁸² Law 3996/2011 on the reform of the Hellenic Labour Inspectorate, social security issues and other provisions (Νόμος 3396/2011 'για την αναμόρφωση του Σώματος Επιθεώρησης Εργασίας, τη ρύθμιση θεμάτων Κοινωνικής Ασφάλισης και άλλες διατάξεις') (OJ 170 A/05.08.2011).

⁸³ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* ('Εκθεση Της Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

unable to perform. This caused dissatisfaction among his colleagues. The administration then asked him to move to another workplace, without being assigned a specific job. The Ombudsman found that the employer did not take the appropriate measures to enable the employee to work smoothly; on the contrary, mismanagement by the employer led to offensive discussions and behaviours against the employee. Eventually, the employee was placed in another department, where he was able to carry out his work (case 246589).

In another case, according to the same report,⁸⁴ a public hospital nurse working according to a 'full-circle' (i.e. 24-hour) timetable in the emergency department was relieved of her full-circle working hours at the suggestion of the relevant health committee, due to health problems that she was facing. After a few years, the service resumed her placement on afternoon shifts, ignoring the medical reports provided by the employee. The Ombudsman asked the hospital to make reasonable adjustments. Finally, the hospital allowed the employee to remain at the ophthalmology clinic, with four afternoon shifts per month, and transferred her, as an alternative, to the orthopaedic clinic with shifts exclusively in the morning (case 252092).

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Greece, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses. All grounds are covered.

According to Article 3(1)(b) of Equal Treatment Law 4443/2016:

'1. Without prejudice to paragraphs 3 and 4 of this Article, and to Article 4, the principle of equal treatment, (...) shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.'

There is no indication of the extent of the application of Law 4446/2016 with regard to technical schools, universities, adult lifelong learning courses etc.

Nevertheless, national anti-discrimination law must be interpreted in the light of EU law and the Greek Constitution. In addition, under Article 16(7) of the Constitution, technical schools, universities and adult lifelong learning courses fall under the protection of the state.

Law 2956/2001⁸⁵ on Restructuring the Manpower Employment Organisation (OAED – Οργανισμός Απασχόλησης Εργατικού Δυναμικού) provides for the vocational training of disabled people.

Articles 9 and 10 of Law 2224/1994⁸⁶ ensure access by nationals of other Contracting Parties to all vocational guidance and training programmes run by the OAED.

Concerning the elimination of discrimination related to vocational training, Article 10 of Law 4358/2016⁸⁷ seeks to ensure the right of all persons to technical and vocational

⁸⁴ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Της Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

⁸⁵ Law 2956/2001 on the restructuring of the OAED and other provisions (OJ 258 A/06.11.2001).

⁸⁶ Law 2224/1994 on the regulation of employment, union rights, worker's health and safety and the organisation of the Labour Ministry and the legal bodies it supervises and other provisions (OJ 112 A/06.07.1994).

⁸⁷ Law 4358/2016 on the ratification of the Revised European Social Charter (OJ 5 A/20.01.2016).

training. To this end, measures have been taken to offer grants that will facilitate access to higher technical and university education, based solely on individual aptitude. Article 10 also provides for a system of apprenticeship and other systematic arrangements for training young boys and girls, which will provide adequate and readily available training facilities for adult workers. As for persons with disabilities, Article 15 of the same Law seeks to ensure that persons with disabilities, irrespective of their age and the nature and origin of their disabilities, may effectively exercise their right to independence, social integration and participation in the life of the community. For this reason, Greece is committed to introducing measures to provide persons with disabilities with guidance and vocational training, public or private, to facilitate their access to employment and to promote their full social integration and participation in the life of the community.

Article 37 of Law 4590/2019⁸⁸ abolished Article 36 of Law 1943/1991,⁸⁹ which stipulated that a public employee could not participate in a programme of post graduate education that would result in the improvement of his/her status within the hierarchy of the public administration if he/she had reached the age limit of 45. The age limit concerned specific programmes that were relevant to the needs of the specific position and would result in a different work status. The gaining of such an educational qualification matters for professional development within a public service, resulting in an improved salary.

According to the Ombudsman's 2019 *Equal Treatment Report*,⁹⁰ it received a complaint in 2019 that the head of a public hospital's nursing service had refused to allow a Muslim student to carry out her internship at the hospital wearing a headscarf. The Ombudsman asked the hospital administration to provide a specific and thorough justification, in compliance with the relevant provisions of Law 4443/2016, for the reasons for this decision. The hospital cited reasons of protecting public health, as the student's traineeship would have to be performed in the pathology or surgical clinics. According to the report, the case was still being investigated during finalisation of the Ombudsman's report (case 264690).

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Greece, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations, as formulated in the directives for all five grounds and for both private and public employment.⁹¹

Article 3(1)(d) of Equal Treatment Law 4443/2016 repeats the text of Article 3 of the Employment Equality Directive:

'1. Without prejudice to paragraphs 3 and 4 of this article, and to Article 4, the principle of equal treatment, (...) shall apply to all persons, as regards both the public and private sectors in relation to: (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on

⁸⁸ Law 4590/2019 on strengthening the Supreme Council for Selection of Personnel Selection, strengthening and upgrading the public administration and other provisions (*Νόμος 4590/2017 για 'ενδυνάμωση του Ανώτατου Συμβουλίου Επιλογής Προσωπικού, ενίσχυση και αναβάθμιση της δημόσιας διοίκησης και άλλες διατάξεις'*) (OJ 17/07.02.2019).

⁸⁹ Law 1943/1991 on the modernisation of planning, the functioning of the public administration, the upgrading of its personnel and other relevant provisions (*Νόμος 1943/1991 'για τον εκσυγχρονισμό της οργάνωσης και της λειτουργίας της δημόσιας διοίκησης, την αναβάθμιση του προσωπικού της και άλλες συναφείς διατάξεις'*) (OJ 50 A/11.04.1991).

⁹⁰ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (*Έκθεση Ίσης Μεταχείρισης 2019*), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

⁹¹ In addition to Law 4443/2016, Law 1426/1984 on the ratification of the European Social Charter recognises and prohibits any discrimination on the grounds of membership of and activity in trade unions or employers' or employees' organisations.

a particular profession, including the benefits provided for by such organisations, especially the right to vote and be elected.’

Article 7(1) of Law 1264/1982⁹² provides for the right of foreign nationals who are legally employed in Greece to be members of professional associations of any kind. Until recently, problems had been experienced with the right of foreign workers to establish themselves and join professional associations. According to Article 107 of the Introductory Law of the Civil Code, executive board members of non-profit associations (*σωματεία*) must be Greek nationals. Judicial interpretation proves that this antiquated provision is no longer applied.⁹³

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Greece, national legislation covers social protection, including social security and healthcare, as formulated in the Racial Equality Directive. Therefore, only the grounds of race, colour, national or ethnic origin and descent were initially covered. However, following the adoption of Law 4356/2015, couples who have entered into a civil partnership agreement (including same-sex couples), may now enjoy the same social protection rights granted to married couples.

Article 3(2) of Equal Treatment Law 4443/2016 follows the wording of the Racial Equality Directive in relation to racial or ethnic origin discrimination only, referring to ‘social protection including social security and healthcare, social advantages, education, access to and supply of goods and services which are available to the public, including housing’. Furthermore, Article 3(4) states that the principle of equal treatment irrespective of religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics does not apply to all types of benefits offered by public or equivalent systems, including public social security and care systems.

It should be noted that regular insurance risks are considered to include sickness, maternity, disability, industrial injury or disease, old age, the death of a family provider, a lack of housing and the destruction of agricultural production. With regard to healthcare, the Greek Constitution, through an amendment in April 2001,⁹⁴ provides that ‘all persons’ have the right to health protection (Article 5(5)).

Social care is the subject of Law 2646/1998⁹⁵ on the development of the national system of social care. According to this law, social care means:

‘protection provided to persons or groups through programmes of prevention and rehabilitation and aims to create the conditions for equal participation by these persons in economic and social life and safeguards a decent standard of living for them.’

According to Article 1(2) of Law 2646/1998, ‘social care’ involves state responsibility, and anyone legally residing in Greece who is in an emergency situation is entitled to social care from the institutions of the national system.

⁹² Law 1264/1982 on the democratisation of the union movement and the establishment of workers’ union rights (OJ 71/01.07.1982).

⁹³ Single-Member First Instance Court of Thessaloniki, Decision 4300/1996 and Single-Member First Instance Court of Thessaloniki, Decision 5251/2004.

⁹⁴ The Greek Constitution is amended through parliamentary resolutions issued by a revisionary parliament (a special form of parliament which convenes for the sole purpose of amending the Constitution). The amendment of 2001 was carried out through the Parliamentary Resolution of 6 April 2001 of the VIIth Revisionary Parliament. The last amendment to the Constitution was in 2008, through the Parliamentary Resolution of 27 May 2008 of the VIIIth Revisionary Parliament.

⁹⁵ Law 2646/1998 on the development of a national care system and other provisions (OJ 236 A/20.10.1998).

Article 3(3) of the same law expressly provides that social care services should be provided without any distinction, according to the particular personal, family, economic and social needs of the beneficiaries.

On 24 December 2015 the Greek Parliament passed Law 4356/2015, which recognises same-sex civil partnerships and grants people who enter such partnerships the same legal status as married couples in areas such as social protection, including social security and healthcare. For example, partners who have entered a civil partnership can have access to the benefits of social protection and health insurance on the same footing as married couples. They also benefit from inheritance law provisions that apply to surviving spouses. However, same-sex couples still experience disadvantages, especially during transactions with public servants who have not been made aware of the law. For example, there have been cases where same-sex couples have wanted to gain access to benefits and public servants have refused, stating that they are not legally married. However, this is related to a lack of education among civil servants. Moreover, couples who enter civil partnership (irrespective of their sexual orientation) do not have the same family rights as married couples.⁹⁶

There is no available case law on this issue.

The Greek Ombudsman notably argued that the benefits system for the long-term unemployed constitutes a complex provision of social insurance which falls within the scope of social welfare, and that it therefore also falls within the scope of application of the principle of equal treatment of long-term third-country residents and second-generation holders of residence permits.⁹⁷

Through Law 4529/2018,⁹⁸ which was published on 23 March 2018, legislators have introduced additional conditions for the recognition of benefits involving access to insurance coverage and medical and pharmaceutical care to protected family members of insured third-country nationals. Before the entry into force of Law 4529/2018, all third-country nationals – and not only long-term residents – used to have access to insurance and medical care. The Law stipulates that the beneficiaries should fall into the category of ‘long-term residents’ and that their family members should be eligible for the above benefits only ‘if they meet the conditions of Presidential Decree 150/2006 (Directive 2003/109/EC) which specifies the legal status of long term residents and reside permanently in Greece’.

Insurance and medical benefits are recognised only for foreigners who are long-term residents, that is to say not for all third-country nationals who have acquired a permit to stay. This means that, under the provisions of the Law, all other legal third-country nationals are excluded from this protection.

Under Article 21A, the Code of Immigration and Social Integration (Law 4251/2014, as modified and brought into effect through Law 4332/2015)⁹⁹ stipulates that Greeks and legal foreigners have equal rights in the fields of employment and social welfare care. The Code does not foresee differentiated treatment based on ethnic or racial origin. More specifically, the equal treatment of third-country nationals is set out with regard to: (a) access to the professional activity (whether employment or not) and the terms of employment and work; (b) education and professional training, including study scholarships; (c) the recognition of professional diplomas, certificates and other

⁹⁶ Same-sex couples cannot adopt children, but they can become foster parents. In cases of natural birth, parental rights are only recognised for the partner who is the biological parent of the child. Hence, both the biological parents of a child can have their child recognised if they are a different-sex couple.

⁹⁷ Greek Ombudsman, *Annual Report 2016* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2016*), available in Greek at: <https://www.synigoros.gr/resources/ee2016-14-diakriseis.pdf>.

⁹⁸ Law 4529/2018 on the transposition of Directive 2014/104/EC concerning rules on lawsuits of reparation for violation of provisions on fair competition and other provisions (OJ 56 A/ 23.03.2018).

⁹⁹ Law 4332/2015 on the modification of provisions of the Code of Greek Citizenship (OJ 76 A/09.07.2015).

qualifications; (d) social security; (e) tax benefits; and (f) access to publicly available goods and services and to processes for acquiring housing. It may be concluded from the above that, according to the current insurance legislation, legally resident third-country nationals enjoy the same rights as the insured native population and/or EU citizens. Consequently, the provision seems to be inconsistent with the relevant existing provisions of the Code of Immigration and Social Integration, which specify that all legally resident foreigners have the same insurance rights as Greek citizens and citizens of EU Member States (Article 21(2) of Law 4251/2014). Therefore, factors such as ethnic or racial origin should not be relevant.

It should also be mentioned that the Greek Ombudsman – in its Opinion No. 224709/2017– considers that the right to insurance coverage and medical and pharmaceutical care should be recognised for the family members of all directly insured third-country nationals under the same conditions as for family members of a Greek or EU citizen. In the text of its Opinion, the Ombudsman specifically refers to its competence to deal with cases concerning equal treatment regardless of ‘race, colour or ethnic origin’ as an equality body established under the Equal Treatment Law 4443/2016.

Finally, the prohibition of discrimination based on racial or ethnic origin also applies in the area of social housing under Equal Treatment Law 4443/2016 (Article 3(2)(d)). It should be mentioned that Greece does not have a general social housing policy; instead, social housing is offered by local authorities or municipalities, NGOs and the Greek Church. Only in recent years has the state been addressing the matter through projects on homelessness and unemployment.¹⁰⁰

a) Article 3.3 exception (Directive 2000/78)

Article 3(4) of Law 4443/2016 relies on the exception in Article 3.3 of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation. However, there has been no case law in this regard so far.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Greece, national legislation prohibits discrimination relating to social advantages as formulated in the Racial Equality Directive, which only covers race and ethnic origin, descent and colour.

The relevant article is Article 3(2)(b) of Equal Treatment Law 4443/2016.

The category of ‘social advantages’ is not often explicitly addressed in Greek law and, when it is, it is generally and broadly defined. For example, Law 139/1975¹⁰¹ on the status of stateless persons explicitly addresses ‘social advantages’. In this context, this term covers housing, the supply of goods through coupons (basically, beneficiaries are supplied with coupons they can use when shopping for products in supermarkets etc. instead of cash), public education and care, and even the entirety of labour law protection and social security.

In Greece, the lack of a definition of ‘social advantages’ does not create problems. For instance, reduced-rate train travel or reduced bus fares for large families were granted to all large families, regardless of their racial or ethnic origin, on the legal basis of Law 3304/2005 (previous legislation) and in accordance with the general constitutional

¹⁰⁰ The Housing and Re-integration Project (*Στέγαση και Επανάταξη*), which ended in December 2017, and the Housing and Employment Project (*Στέγαση και Εργασία*), ongoing in 2020, are both run by the National Institute of Employment and Manpower (*Εθνικό Ινστιτούτο Εργασίας και Ανθρώπινου Δυναμικού*).

¹⁰¹ Law 139/1975 on the ratification of the UN Convention relating to the Status of Stateless Persons (OJ 176 A/25.08.1975).

principles of equal treatment and non-discrimination. This does not appear to have changed under the framework of Law 4443/2016.

According to the Ombudsman's latest *2018 Special Report on Equal Treatment*¹⁰² (covering 2018, published in August 2019), Roma people living in a camp in the Attica region could not submit an application for Social Solidarity Income because they were not students of an evening or second-chance school, and the relevant legislation provides for school attendance as a prerequisite if compulsory education has not been completed. With a document addressed to the competent department of the Ministry of Labour, the Ombudsman requested a re-examination of the joint ministerial decision (JMD) provision, which was considered to be indirect discrimination on the grounds of racial origin. Specifically, the Ombudsman pointed out that the relevant provision excluded beneficiaries of Roma origin who lived in extremely poor conditions, since – as emerges from official data – a large number of Roma people had not completed compulsory education and were not able to attend second-chance schools. With a newer JMD, it would be possible to submit an application, and it was foreseen that, following the relevant personal notification, the competent authorities could invite the beneficiaries who had not completed compulsory education to enrol in a second-chance school (cases 235300, 235302, 235305 and 235442).

In July 2019, the National Commission of Human Rights (NCHR), in a shadow report¹⁰³ on the rights of persons with disabilities, appreciated the fact that, in Greece, most measures and structures providing services targeted to persons with disabilities apply regardless of race, colour, national or ethnic origin. Programmes such as the electronic disability platform operating within the framework of the national Organisation for Welfare Benefits and Social Solidarity (OPECA), the de-institutional programme for people with disabilities designed by the Ministry of Labour and Social Solidarity, tax exemptions, free travel passes, reduced or free of charge participation in medicines could be considered as additional safeguards of adequate living standards for people with disabilities without discrimination.

There is no relevant case law in this area.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Greece, national legislation prohibits discrimination relating to education, as formulated in the Racial Equality Directive, which only covers the grounds of race, colour, national or ethnic origin and descent.

Article 3(2)(c) of Equal Treatment Law 4443/2016 includes the field of education in respect of race and ethnic origin, as required by the Racial Equality Directive. There is no explicit provision prohibiting discrimination in access to education on the grounds of religion or other belief, age, disability or sexual orientation.¹⁰⁴ So far, there has not been any discussion about extending the scope of this protection.

- Age

In relation to discrimination based on ground of age, the Ombudsman, in its *2015 Annual Report*, recognised in principle that support for younger students who fulfil all the necessary financial and social prerequisites is a legitimate aim in order to ensure their support through scholarships. It highlighted, however, that this legitimate aim does not

¹⁰² Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2018*), p. 33, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

¹⁰³ The report is available at: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/GNCHR%20Shadow%20Report%20on%20the%20Rights%20of%20Persons%20with%20Disabilities%20CRPD.pdf.

¹⁰⁴ These grounds could be implicitly protected through interpretation, based on Articles 5 and 28 of the Hellenic Constitution, as highlighted at the beginning of the report. Judicial interpretation is needed.

cancel out another legitimate aim, such as the lifting of rigid exclusions against older students in relation to relevant benefits. If older students face the same educational needs and fulfil the specific financial and social prerequisites, then they should not be automatically excluded from enjoying the same benefits, especially those that are linked to their performance or studies.

- Religion

With regard to discrimination on the ground of religion in the field of education, the Ombudsman, in its *2015 Annual Report*, supported the principle that, in order to respect religious freedom, a student who has been excused from a course of religious education should not be sanctioned in any way, nor should he/she be forced to undergo an onerous precondition, such as being forced to reveal his/her religious beliefs. According to the Constitution, the validity of a statement made for the purpose of being exempted cannot be based on any form of positive or negative declaration of religion. Thus, the right to be exempted should lead to a recognition of the right of any students to declare (themselves if they are adults or through a parent if they are minors) that they wish to be exempted for reasons of conscience, since the constitutional obligation of the state to provide religious education does not exclude the possibility of any student being exempted, based on reasons of conscience, from a course which maintains a self-proclaimed religious character as under Articles 1(1a) and 6(2a) of Law 1566/1985.

- a) Pupils with disabilities

In Greece, the general approach to education for pupils with disabilities gives rise to problems.

Law 2817/2000, which relates to education for children with disabilities, mandates the free education of children with special needs in kindergartens, primary and secondary schools and educational institutions with different curriculum models. The structure of education for individuals with disabilities in Greece and the legal definition of adapted physical education are included in this law.

Law 2817/2000 mandates the education of children with disabilities in state schools, special schools and vocational schools at primary and secondary levels. Education in state schools can be offered in at least four settings: in inclusive classes within state schools – in this environment, children with disabilities must be assessed before admission by a group of specialists (comprising a primary school teacher, secondary school teacher, psychologist and medical doctor); in special classes within state schools; in special classes within hospitals or other institutions; or in their own homes.

In Greece, there are separate state schools for certain categories of people with disabilities. These are primary and secondary schools for deaf children, primary and secondary schools for blind children and primary and secondary schools for blind children with cerebral palsy.

According to the aforementioned Law 2817/2000 on education for children with disabilities, the rule (i.e. the preference) for these groups of pupils is mainstream education, and the exception (in very special cases) is segregated education. The latter is not regarded as discriminatory.

The above legal framework was complemented by Law 3699/2008 on special education for people with disabilities or special educational needs.

The aim of Law 3699/2008 is to guarantee to all children with disabilities their right to education and social and professional integration, along with equal opportunities for their full participation in and contribution to society. Special education is defined as an integrated part of universal free state education at every level (pre-school, primary school and

secondary school). The diagnosis process is an essential element of the system of special education. The special educational needs of disabled children are 'identified', investigated and verified by public bodies called special assessment and diagnosis centres, under the auspices of the Ministry of Education. These centres comprise a variety of specialists who play a key role in the accommodation of the needs of disabled children (Article 4). The centres are authorised to propose individually tailored programmes of educational and psychological support for the children and to recommend the specific school units to which they should be admitted. The remit of the centres also includes providing advisory support to school staff where necessary; supervising the children's school work and identifying their skills; defining specific educational and technical equipment required to meet the children's educational needs; organising potentially constant medical support for children who need it during school hours; proposing suitable methods for teaching and assessing the pupils, taking into consideration their different disabilities; and producing reports for each individual child.

With regard to enrolment at universities, there are no uniform rules governing admissions procedures for people with disabilities. In Article 35, Law 3794/2009 states that 5 % of the top achievers with disabilities may apply for a course of their choice without sitting examinations. However, the final decision about whether to accept them or not still rests with the individual university department, and the application of this quota in practice is problematic, given the lack of necessary infrastructure in most educational buildings.

In September 2014, Article 7 of Law 4283/2014¹⁰⁵ introduced a quota of 5 % of places at universities and public technological institutes for students with a disability classed as equal to or greater than 67 %.

The Ombudsman has constantly pointed out the deficiencies of the Greek educational system, especially concerning issues of non-discrimination, participation, social integration and the inclusive education of children with disabilities or/and special needs. The position of the authority responsible for special education and training (the EAE) is that it is an integral part of general, public and compulsory primary and secondary education. For this reason, it must be integrated into the regular state budget, regardless of the additional utilisation of National Strategic Reference Framework (NSRF) programmes to ensure the necessary additional resources. The severe impact of the economic crisis on education as a whole does not negate the duty of care to ensure resources for the education of students with disabilities and/or special educational needs in order to guarantee this category of students equal opportunities to enjoy the right to education through the appropriate corresponding means (parallel support, integration classes, specialised and customised training programmes and teaching methods, etc.).

According to the Ombudsman's *Special Report on Equal Treatment* for 2019,¹⁰⁶ the Ombudsman received complaints on the systematic delay in the procedure for the enrolment of students with disabilities in higher education under the 5 % quota mentioned above, which prompted the body's concern about the equal treatment of these students compared with other students entering higher education. The Ombudsman requested the immediate completion of the procedure for the current academic year (2019/2020), ensuring the timely publication of results and the registration of the successful applicants before the beginning of the relevant courses (see for example cases 266960, 267049 and 267065).

b) Trends and patterns regarding Roma pupils

In Greece, there are specific patterns in education regarding Roma pupils, including segregation.

¹⁰⁵ Law 4283/2014 on the establishment and organisation of a national policy council for education and other provisions (OJ 189 A/10.09.2014).

¹⁰⁶ Greek Ombudsman, *2019 Special Report on Equal Treatment*, available in Greek at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

In its fifth report,¹⁰⁷ published in February 2015, the ECRI notes with concern that Roma remain at a great disadvantage when it comes to education. There are still cases of schools refusing to enrol Roma children, in some instances due to pressure from some non-Roma parents. There are also cases of Roma children being separated from other children within the same school or in the vicinity thereof. The absence of disaggregated data on the situation of Roma pupils makes any in-depth assessment of their situation and the possibility of devising specific programmes targeting this group difficult. The ECRI urged the Greek authorities to strengthen measures taken to address problems faced by Roma children in education including exclusion, discrimination and under-performance, in full compliance with the judgments from the European Court of Human Rights (see below), as well as with the ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education. The ECRI further recommended that the authorities take a comprehensive approach to addressing these problems, including through the Inter-Ministerial Committee dealing with Roma issues.

In general, the persistent housing, employment and social protection problems of the Roma appear to constitute the most crucial obstacles to improving the situation in education.

In the 2012 case of *Ioanna Sampani and Others v. Greece*, which was filed by 140 Roma (98 children and 42 parents), the European Court of Human Rights ruled that there was evidence of a practice of discrimination under Article 14 of the European Convention on Human Rights, in conjunction with Article 2 of Protocol No. 1. Specifically, the Court found that the continuing racist educational segregation of Roma children in a Roma-only ghetto school, namely the 12th Elementary School of Aspropyrgos, constituted a violation of the above articles. What is more, the segregation occurred in spite of the judgment of 5 June 2008 in the case of *Sampanis and Others v. Greece*, which was adjudicated prior to the *Ioanna Sampani* case, when the ECtHR found a violation by Greece through the initial exclusion from school of Roma children living in the Psari settlement of Aspropyrgos and their subsequent segregation in a ghetto school (an annex of the 10th Elementary School of Aspropyrgos). Following the ECtHR judgment, the Ministry of Education renamed the annex of the 10th Elementary School of Aspropyrgos the 12th Elementary School of Aspropyrgos. This, however, did not resolve the issue of segregation.

Finally, the *Lavida and others v. Greece* judgment issued in May 2013 yet again confirmed the segregation in 2013 of all Roma pupils in Sofades in a ghetto school, with the non-Roma pupils attending two other schools. The applicants asked for the desegregation of the Sofades (Thessaly) school system, but the authorities refused. Several questions have been tabled to Parliament by opposition MPs on the implementation of these judgments.

It is noteworthy that this was the third European Court of Human Rights ruling on segregation involving Greek schools, which means that, despite three separate relevant ECtHR rulings up to the end of 2013, Greece has failed to change its ongoing discrimination against Roma schoolchildren or to halt the flagrant violation of their right to education. Access to education still remains a prevailing issue for the Roma community. The education of Roma children does not seem to be given due consideration when planning solutions for the relocation of Roma settlements, and ensuring easy access to the education process does not seem to constitute a strategic goal. The investigation of referrals submitted to the Greek Ombudsman in 2017¹⁰⁸ regarding the education of Roma children demonstrated that the Equality body had received complaints from citizens who, although they fell under the category of citizens living in conditions of extreme poverty and needed supplementary income support, which can be provided to them through the Social Solidarity Income programme(KEA), they were in fact being excluded from receiving this support because they were unable to fulfil the prerequisite of prior enrolment in second-chance schools. The

¹⁰⁷ ECRI (2015), *Report on Greece (Fifth Monitoring Cycle)*, CRI(2015)1, available at: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf.

¹⁰⁸ Greek Ombudsman, *Annual Report 2017* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2017), available in Greek at: https://www.synigoros.gr/resources/docs/internet_metax_2017_eng.pdf.

Roma citizens who addressed the Ombudsman, like the majority of those living in makeshift camps, not only have not completed primary education, but are illiterate (or at least functionally illiterate).

It should be further mentioned that, according to Amnesty International's *Annual Report*¹⁰⁹ for 2015 on the situation of human rights in all states worldwide, including Greece, which was published on 23 February 2016, many Roma children were excluded from or segregated in education. Such cases have been recorded in many areas of Greece, including Aspropyrgos, Sofades and Karditsa. In spite of the ECHR decision in the case of *Lavida v. Others*, Roma children remained in a segregated school in Sofades, a small town in Central Greece, even in 2019. According to Amnesty International's *Annual Report* for 2016/2017,¹¹⁰ the UN Committee on the Elimination of Racial Discrimination expressed concern about the situation of Roma in Greece, including the obstacles they faced in accessing basic services such as education. In Amnesty International's *Annual Report* for 2018, there is no reference to Roma in Greece.

There has been a change in practice. In support of integrating Roma children into the educational system and in order to safeguard the fulfilment of their education (and graduation), especially in primary education, Article 70 of Law 4485/2017¹¹¹ introduced a measure for hiring special educational staff, consisting of psychologists and social workers at specific school units of general and professional education, where this is necessary for the support of vulnerable groups or where it is necessary for providing psychosocial and emotional support for children. Ministerial Decision No. 144073/Δ1/1-9-2017¹¹² appointed 30 social workers at 42 primary schools, who will be on duty during the 2017/2018 school year. For the 2018/2019 school year, social workers were placed at 47 school units attended by Roma students (Ministerial Decision No. 163144/Δ2/2018). Primary Education School Unit groups were established where psychologists offered their services, mainly psychological support to Roma children and parents. For the 2019/2020 school year, social workers were appointed at 47 school units through Ministerial Decision No. 126988/Δ1/2019. These school units were located in areas with a mainly Roma population. It should be highlighted that, before every school year, the Ministry of Education issues circulars instructing local educational authorities to take measures for the integration of Roma children into their schools.

In 2018, the Ministry of Labour, Social Security and Social Solidarity inaugurated 'multicentres' (*Πολυκέντρα*) located close to Roma schools and settlements, including facilities and services dealing with personal and environmental hygiene. In conjunction with the Roma Annexes – introduced in previous years as special divisions within municipalities – the multicentre provides holistic services, especially to Roma children, so that they can integrate smoothly into the education system.

According to the relevant – and crucial – Ombudsman's *Annual Report 2015*,¹¹³ discrimination issues concerning the education of Roma children are related to the following factors:

- school integration and ensuring the attendance of certain categories of children who need the cooperation of both their parents, as well as any educational factors;

¹⁰⁹ The findings of the report (concerning only Greece) are available in Greek at: www.amnesty.gr/news/ektheseis/article/20216/etisia-ekthesi-2015-ellada.

¹¹⁰ The findings of the report (concerning only Greece) are available in English at: <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

¹¹¹ Law 4485/2017 on the organisation and operation of higher education, arrangements for research and other provisions (*Οργάνωση και λειτουργία της ανώτατης εκπαίδευσης, ρυθμίσεις για την έρευνα και άλλες διατάξεις*) (O.G.A114/04-08-2017).

¹¹² Ministerial Decision No. 144073/Δ1/1-9-2017 on the Appointment of PE30 Social Workers at School Units (*Καθορισμός Σχολικών μονάδων τοποθέτησης Κοινωνικών Λειτουργών κλάδου ΠΕ30*) (O.G. Β 3084/01-09-2017).

¹¹³ Greek Ombudsman, *Annual Report 2015*, (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2015*), available in Greek at: <http://www.synigoros.gr/resources/docs/ee2015-00-stp.pdf>.

- difficulties and shortcomings related to the vaccination of children, their health insurance and living conditions, as well as the resulting refusal of school authorities to enrol Roma children, together with the objections of other children's parents;
- the manner in which school integration and the connection from children with the student body is carried out (deficiencies in reception classes, isolation of specific students in separate classes, 'ghetto schools');
- problems related to the transportation of children to and from school facilities;
- the inconsistent application or overall lack of support programmes (e.g. those relating to the output of programmes carried out for the education of Roma children, the offering of support measures such as writing materials, meals etc.);
- issues with identification documents (naming, inclusion on the population register) and the handling of matters related to child custody;
- the school attendance of older Roma children (15-18-year-olds) who have not completed their primary school education;
- Offering paid benefits to families in order to boost the school attendance of students who come from very low-income families, many of whom are Roma.

In 2016 and 2017, the Ombudsman continued to investigate relevant cases, which mainly concerned the optimal integration of Roma children into the school environment by aiming to provide essential education and ensuring that they remained in school.¹¹⁴ Within the framework of investigating a series of complaints, the Ombudsman again visited a large number of settlements and houses throughout the whole country in 2017, as well as going to the schools where Roma students were enrolled and cooperating with the relevant authorities and services. There is no written summary of findings of the above visits to settlements and schools.¹¹⁵

According to the *2018 Special Report on Equal Treatment*¹¹⁶ (covering 2018, published in August 2019), the Ombudsman addressed the Directorate of Primary Education and the Municipality of Xanthi in 2018, pointing out that the steadily increasing number of pupils and the condition of the premises housing the Drosero primary schools – as well as the fact that the 8th Middle School is housed in a building that belongs to a government agency – necessitate the immediate design and construction of a new building complex. As the Ombudsman pointed out, the realisation of this project would make attendance more appealing, it would facilitate teaching and it would ensure that everyone had a right to education regardless of whether they were Roma or non-Roma pupils. The Municipality of Xanthi has informed the Ombudsman of the actions it has taken with respect to the authority's notes (case 233478).

3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Greece, national legislation prohibits discrimination relating to access to and the supply of goods and services, as formulated in the Racial Equality Directive.

¹¹⁴ Greek Ombudsman, *Annual Report 2016* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2016*), available in Greek at: <https://www.synigoros.gr/resources/ee2016-14-diakriseis.pdf>; and Greek Ombudsman, *Annual Report 2017* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2017*), p. 72, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

¹¹⁵ After communication between the author and the Ombudsman's Office on 24 July 2019, it was ascertained that the Ombudsman was not in position to provide any information on the specific issue. It should be mentioned that, although the Ombudsman is authorised to visit settlements and schools in order to be informed and to get a general picture of the situation so as to facilitate his understanding of the existing problems, he is not obliged to register specific findings from the relevant visits or to include them in a special official document or report. Indeed, not all developments concerning specific individual cases that are investigated by the Ombudsman are released into the public domain, let alone the findings of special visits.

¹¹⁶ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2018*), p. 34, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

Article 3(2)(d) of Law 4443/2016 prohibits discrimination in the 'access to and supply of goods and services which are available to the public, including housing' on the grounds of race, colour, national or ethnic origin and descent.

Previously, Article 16(1) of Law 3304/2005 (the former anti-discrimination legislation), prohibited discriminatory treatment during transactions relating to the provisions of goods and services. However, no amendment had been made to the Criminal Code. Law 4356/2015,¹¹⁷ under Article 29, amended the Criminal Code by introducing in Article 316B the punishment of offenders who treat others with contempt (this corresponds to the term *καταφρόνηση* used in the original Greek legal text) by refusing to provide them with goods and services based on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, sexual orientation, gender identity or disability (age is not included as a ground). This article thereby expanded the grounds covered in the field of goods and services under Law 3304/2005 (note that Article 16(1) of Law 3304/2005 needed an amendment to the Criminal Code in order to take effect). After the amendment of anti-discrimination legislation in 2016, Article 11 of Law 4443/2016 stipulated that whoever refuses to provide goods and services on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, sexual orientation, gender identity, sex characteristics or disability and chronic illness is punished with a term of imprisonment ranging from three months to five years and a fine ranging from EUR 1 000 to EUR 5 000.

According to Article 361B of the Criminal Code: '1. Whoever supplies goods or offers services or announces through a public call the supply of goods or provision of services by excluding out of disdain individuals based on characteristics of race, colour, national or ethnic origin, genealogical origin, religion, disability, sexual orientation, identity or gender characteristics, shall be punished with imprisonment of a minimum of 3 months and a fine of at least EUR 1 500'. The specific crime under Article 361B is prosecuted *ex officio*.

This article was aimed mainly at punishing specific activities that constituted common practice on the part of members of the far-right party, Golden Dawn.¹¹⁸

The new Criminal Code, which was introduced by Law 4619/2019¹¹⁹ and came into force on 1 July 2019, replacing the previous Criminal Code dating from 1950, abolished Article 361B. According to the Explanatory Report for Law 4619/2019, 'interpretative issues' led to the repeal of the provision, although the report did not explain what those issues were.

However, it should be highlighted that this repeal does not affect the general interdiction of discrimination regarding access to goods and services, as stipulated by the basic anti-discrimination law, Equal Treatment Law 4443/2016.

The modernisation of procedures for the enjoyment of access to goods and services is aimed at enhancing and improving the manner in which services are supplied. Yet these modernisation attempts fail to take into account the delicate position of vulnerable groups, such as the Roma, who are not familiar with modern internet-based services or who are generally illiterate. A supportive institution should be established which will cooperate with municipal service providers to provide services to vulnerable groups, including the Roma.

¹¹⁷ Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions.

¹¹⁸ According to the introductory report accompanying Law 4356/2015, this behaviour and public display of contempt towards vulnerable groups not only impairs their social status, but also demonstrates that the members of such groups are not even acknowledged as human beings (and therefore, are not deserving of charity). According to the same report, such behaviour is humiliating and simultaneously fuels propaganda, perpetuating a belief that certain lives are stripped of humanity and are therefore not worthy of food or medical treatment.

¹¹⁹ Law 4619/2019 on ratification of the Criminal Code (*Νόμος 4619/2019 'για την κύρωση του Ποινικού Κώδικα'*) (OJ 95A/11.06.2019).

a) Distinction between goods and services available publicly or privately

Greek law distinguishes between goods and services that are available to the public (to anyone) and those that are available privately (for instance goods or services provided only to members of an association).

Article 3(2)(d) of Equal Treatment Law 4443/2016 states: 'Apart from the reservations of paragraphs 3, 4, 6 below and article 4 of the present, the provisions of the present chapter apply to all individuals in the public and private sector in relation to ... d. access to the availability and supply of goods and services which are [commercially – *συναλλακτικά*] available to the public, including housing.'

According to the Greek Ombudsman's *Equal Treatment Report 2019*,¹²⁰ the Ombudsman intervened in a case of discrimination against asylum seekers. Banks refused to open an account for asylum seekers because they did not have a passport, but only an application ID for international protection or a card from the Asylum Service. The Ombudsman contacted the Bank of Greece and pointed out that application ID for international protection constitutes an administrative document that allows legal transactions during a person's stay on Greek territory and during the document's period of validity. Refusing to conduct a bank transaction with asylum seekers for the above reason represents unfavourable discrimination against this group, with serious consequences for their essential rights, such as the right to work, which requires a bank account for the payment of salaries. The Bank of Greece responded positively by sending instructions to the banks, according to which the identification of asylum seekers can be carried out on the basis of the original application ID for international protection (cases 230236, 237214, 247626, 254244). The Ombudsman examined the matter under the scope of ethnic discrimination.

In another case related to the public sector, according to the same Ombudsman's report,¹²¹ a beach managed by a municipal company allowed foreigners from countries other than the Schengen area to enter with only a passport, but a Syrian national was barred from entering because he only had international protection application ID. The Ombudsman noted that the municipal company had violated the principle of equal treatment due to national or ethnic origin when accessing goods and services and forwarded the relevant case file to the relevant prosecutor's office (cases 246084, 246598, 249915).

The Ombudsman intervened in another public sector case in 2019.¹²² It received a complaint that a municipality, based on a regulatory decision issued by its municipal council, did not grant licences for the use of public space for the parking of cars belonging to people with disabilities, because the disabled people concerned did not have a mobility disability of more than 70 %. Following the intervention of the Ombudsman, in accordance with a new regulatory decision by the municipal council, the restrictive condition of a level of disability over 70 % was abolished, and disabled parking spaces were granted to all holders of a parking card for disabled persons' vehicles (case 242299).

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Greece, national legislation prohibits discrimination relating to housing, as formulated in the Racial Equality Directive.

¹²⁰ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Ίσης Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

¹²¹ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Ίσης Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

¹²² Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Ίσης Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

Article 3(2)(d) of Equal Treatment Law 4443/2016 covers 'access to and supply of goods and services which are available to the public, including housing',¹²³ but only in respect of race and ethnic origin, as required by the Racial Equality Directive. Therefore, age, disability, religion or belief and sexual orientation are not covered.

According to Article 21(4) of the Greek Constitution, 'the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care'.

Also, Article 9 of the Constitution provides – without making any differentiation for reasons of racial or ethnic origin or other grounds – that:

1. Every person's home is a sanctuary. The private and family life of the individual is inviolable.¹²⁴ No home search shall be made, except when and as specified by law and always in the presence of representatives of the judicial power.
2. Violators of the preceding provision shall be punished for violating the home's asylum and for abuse of power, and shall be liable for full damages to the sufferer, as specified by law.

Article 3(2)(d) of Equal Treatment Law 4443/2016 prohibits discrimination based on the grounds of race or ethnic origin. Therefore, migrants and refugees enjoy the same rights as Greek nationals when it comes to housing (including social benefits).

In 2019 there were no governmental policies in place for ensuring the prohibition of discrimination in the field of housing based on race or ethnic origin.

There have been no major court decisions related to this issue.

There is no major anti-discrimination case law in the field of housing.

According to all the annual reports of the Greek Ombudsman as an equality body, all cases involving discrimination in the field of housing exclusively concern Roma.

In Greece, housing issues are largely considered to belong to the private rather than the social sphere, which means that they are regarded as individual responsibility, and therefore state policies on social housing are limited.

Further to publications by the media, which stated that entrepreneurs, invoking the relevant decision taken by the Lesbos Hoteliers' Union, have been declining to enter contracts with the bodies in charge of the temporary housing of applicants for international protection and of newly arrived foreigners living at the Reception and Identification Centre in Moria, Lesbos, the Ombudsman proceeded with an immediate investigation of the issue in January 2017.¹²⁵ In addressing his own document to the Lesbos Hoteliers' Union, which was also disclosed to the Lesbos Chamber and the Hoteliers Chamber of Greece, the Ombudsman noted that, in the framework of the commercial transaction of goods or the provision of services to the public, the infringement of the principle of equal treatment on grounds, *inter alia*, of race, colour or national or ethnic origin gives rise to criminal sanctions (Article 11(1), 4443/2016).

Further to its actions, the Ombudsman was informed that local hoteliers had cooperated with the relevant services of the Ministry for Migration Policy and with the UNHCR, so that

¹²³ Article 3(2) of Equal Treatment Law 4443/2016 states that both the private sector and the public sector are covered.

¹²⁴ The Greek Constitution does not explicitly mention same-sex families. However, it should be highlighted that, in a recent case, the Greek Council of State stated that the constitutional protection of the family is not subject to its creation through marriage, but by its nature is necessarily affected by social variations in the course of time undergoing development and redefinition (Decision No. 2003/2018 of the 3rd Section of the Council of State), which leaves the term 'family' open to interpretation.

¹²⁵ https://www.synigoros.gr/resources/docs/greek_ombudsman_migrants_refugees_2017-el.pdf.

the applicants for international protection, as well as people belonging to vulnerable groups, could be housed in the island's hotels.

a) Trends and patterns regarding housing segregation for Roma

In Greece, there are patterns of housing segregation and discrimination against Roma.

It is noteworthy that a legislative provision in the Municipal and Communal Code contains a duty on the part of the municipal authorities to plan and implement integration schemes for Roma people.¹²⁶

A number of relocation schemes for Roma settlements are still in progress. In practice, the purpose of most of them is to remove existing Roma settlements from urban areas. Moreover, their settlements are relocated to isolated areas, which makes it nearly impossible for the Roma to enjoy dignified living conditions or to access education, health services and employment. In its 2017 report, the Ombudsman recommended that all bodies involved in housing cases (municipalities, police departments, regional authorities, etc.) avoid undertaking any measures of violent expulsion or forced eviction of the Roma from their places of residence, underlining the point that their departure from an area requires prior actions on the part of the competent services, indicating a specific place of relocation, suitable for permanent residence, which would meet the minimum conditions of dignified and secure living.

The Greek Ombudsman, in its recent *Equal Treatment Report 2019*, referred to the issue of discrimination against Roma in the field of housing.¹²⁷ The issue of the actual residence of the Roma is often highlighted as a major problem in the Ombudsman's reports. In particular, residence certification is a necessary document: (a) for inclusion in the KEA programme (a benefit scheme) or in other social protection programmes; (b) for the submission of a relocation request; (c) for the issuance of an unemployment card by OAED (the Manpower Organisation); and (d) for the submission of a request to be enlisted in the Armed Forces or for recognition as a conscientious objector.

However, the Ombudsman has found that the respective municipal authorities often create various obstacles for Roma applicants, as their type of housing (e.g. dwellings made with rough materials, shacks or caravans on privately owned plots of land) does not usually match the common concept of a residence.

The reason that tends to be given for refusing to accept or examine these applicants' requests is that they have not submitted the supporting documents mentioned in the relevant provisions (e.g. water and electricity accounts/receipts or tax registry notes), or they have failed to provide additional supporting documents (e.g. legal deeds or property lease documentation). Even in cases where there is explicit legal provision for proving the status of permanent residence by any appropriate means, the Ombudsman has found that the authorities responsible for issuing residency certification will often require evidence that the applicant is staying legally in a particular building or space.

In these cases, the Ombudsman intervenes by pointing out to the municipal authorities that the certificate of permanent residency certifies the actual residence of a person in a specific place, and not the person's situation or type of house. Hence, the beneficiaries of this certification are not only those who live in fixed residences, but also those who are housed in shacks or makeshift accommodation. The relevant authorities responded positively to the Ombudsman's interventions.

¹²⁶ Law 3463/2006 on the Municipality and Community Codex, Article 75(1)(e)(5) (OJ A 114/08.06.2006), entered into force 01.01.2007.

¹²⁷ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Της Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

In July 2019 the Special Secretariat for the Integration of Roma was officially abolished, and its competences were transferred to the Ministry of Social Solidarity.

However, following the cooperation of the Special Secretariat with the Municipality of Farsala on the completion of procedures for the development of an organised temporary relocation area for special social groups in that municipality, a relevant joint ministerial decision¹²⁸ (No. 25878/ EC352) was issued on 7 June 2019. The intervention concerned the creation of an organised temporary relocation area to provide decent housing and living conditions to 31 households. The property was owned by the Farsala Municipality for the purpose of relocating Roma families.

On 18 April 2019 it was announced by the Municipality of Chalandri that the rapid relocation of Roma from a settlement in the Mint area of the municipality to organised apartments was proceeding rapidly, with the aim of socially integrating this population.¹²⁹ This was the first major social intervention for the Roma population for 30 years, as the camp was in an urban context. The project is being funded as a pilot by the European Social Fund, and the municipality is preparing a dossier for a EUR 850 000 three-year deployment. Long before Attica Region was invited in as the managing authority for Community funds, the municipality had begun relocating the first 40 Roma from the settlement of Patitiri to rented houses, as well as 70 people from the Mint area. The authorities have demolished the shacks, and the site is gradually being freed up. The pilot programme, which is continuing until 31 December 2023, is using funding for the integration of Roma into organised housing. The municipality has a role of mediator between Roma and apartment owners. The funding is intended to cover rent and utility bills under Joint Ministerial Decision 25878/ EC352.

In contrast, on 19 September 2019, bulldozers from the Municipality of Thermaikos outside the city of Thessaloniki destroyed the shelters of dozens of families who had lived in the Roma camp in Cesiri for more than 15 years.¹³⁰ Thirteen families in the area were left struggling in an attempt to rebuild their lives and had to create shelters to protect themselves from the weather conditions. During 2019 the Roma camp had been targeted by the mayor and was the subject of complaints from residents in the area.

According to a survey conducted by the Athenian News Agency and released on 15 March 2019,¹³¹ around 3 000 Roma from the settlement of Agia Sophia in the Delta of Thessaloniki municipality had been living since 2000 in detention facilities that were even worse than the ones where refugees used to live in the very same area in 2016. They do not have sufficient water or drainage systems, garbage is piled up in heaps, stagnant water gives rise to infections and, when it rains, some parts of the settlement become inaccessible.

¹²⁸ Joint Ministerial Decision 25878/ EC352 on approval for the creation of an Organized Area for the Temporary Relocation of Special Social Groups in the Municipality of Farsala (Κοινή Υπουργική απόφαση 25878/ ΕΓ352 για την 'έγκριση για τη δημιουργία Οργανωμένου Χώρου Προσωρινής Μετεγκατάστασης Ειδικών Κοινωνικών Ομάδων στο Δήμο Φαρσάλων') (OJ 2199 B /07.06.2019).

¹²⁹ See <http://www.avgi.gr/article/9308591/9789640/ena-bema-mprosta-sten-koinonike-entaxe-ton-roma>.

¹³⁰ See http://alterthess.gr/content/tsairia-i-katastrofi-toy-kataylismoy-roma-apokalypse-ti-sklirotita-mias-diahronikis?fbclid=IwAR0PhVN7orkZ-E8_gc_LNw20rYIt79G-K0_NiZEAKWjpZiI-bKqWInROy3o.

¹³¹ See https://left.gr/news/i-eidomeni-ton-roma?fbclid=IwAR0DVVBiboEcXmzu8FP_-sAgabHnejtPwSxPbB4YZqXyXnL7aShAI5B30bU.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Greece, national legislation provides for an exception for genuine and determining occupational requirements.

Article 4(1) of Equal Treatment Law 4443/2016 introduces justified differential treatment based on the protected grounds, which is also enshrined in common Article 4 of both EU Directives. It reiterates that the differential treatment should be based on genuine and determining occupational requirements and should satisfy a legitimate aim in a proportionate manner.

There is no known caselaw related to this issue.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Greece, national law provides for an exception for employers with an ethos based on religion or belief.

As regards occupational requirements, Article 4(2) of Equal Treatment Law 4443/2016 contains special provisions for professions related to churches, religious institutions and public or private organisations. According to these provisions, the law does not affect the right of public or private organisations whose ethos is based on religious or other beliefs to demand that the people working for them act in compliance with that ethos. In these cases, religion or belief compatible with such an ethos constitutes a genuine, legitimate and justified occupational requirement. This means that the Orthodox Church, for example, can discriminate against individuals who are homosexual or in a same-sex civil partnership agreement, irrespective of the position held or for which an individual is applying for, since their way of life is not 'compatible' with the teachings of the Church.¹³²

Article 4(2) also specifies that it does not affect provisions or policies already in existence which relate to the occupational activities of churches or other organisations or associations, the ethics of which are based on religious or other beliefs. This difference in treatment is based on general principles of EU law and cannot justify discrimination based on other protected grounds (i.e. those apart from religion and belief).¹³³

- Religious institutions affecting employment in state-funded entities

In Greece, religious institutions are not permitted to select people (on the basis of their religion), to hire them or to dismiss them from a job when that job is in a state entity or in an entity financed (in whole or in part) by the state.

Moreover, according to well-established jurisprudence from the Greek Council of State,¹³⁴ as a state entity of public law (Article 1(4) of Law 590/1977),¹³⁵ the Orthodox Church of Greece is obliged to respect the fundamental constitutional provisions which provide, *inter*

¹³² The Explanatory Report to Law 4443/2016 states that different treatment is justified due to specific occupational requirements. In practice, however, the Church applies this approach irrespective of this requirement to provide a justification linked to occupational requirements and contrary to ECJ case law, specifically the cases of *Egenberger* and *IR v. JQ*.

¹³³ This exception under Greek law does not appear to be compatible with EU law, especially in light of the CJEU's *Egenberger* and *IR v. JQ* rulings of 2018. However, how to bring the provision into line with the specific ruling is a matter of judicial interpretation.

¹³⁴ The Council of State judged that local origin and religious beliefs do not constitute criteria for public sector recruitment, countering the draft Presidential Decree concerning the recruitment of staff for the Panhellenic Sacred Foundation of Evaggelistria of Tinos. See *Eleftherotipia (Ελευθεροτυπία)* (17.08.2007), available in Greek at: www.enet.gr/online/online_text/c=112,dt=17.08.2007,id=26095400.

¹³⁵ Law 590/1977 on the Statute of the Greek Church (OJ 146 A/31.05.1977).

alia, for non-discrimination (on religious grounds) of Greek citizens in their access to employment in a church entity. In other words, religious beliefs do not constitute criteria for public sector recruitment, even if this recruitment concerns Orthodox institutions.

Furthermore, according to the Greek Council of State, the state and the Orthodox Church have no right to enquire into the religion of teachers of religious education (RE) courses in schools, because such courses concern people with any form of belief, including atheists.

The negative reaction of the previous Greek Orthodox Archbishop Christodoulos to the appointment of atheist RE teachers in schools did not change the situation. There was no judicial act on behalf of the Church in reaction against such appointments.

However, apart from Muslim minority teachers,¹³⁶ who systematically teach in Turkish in the minority schools in Thrace, no other cases of migrant or minority teachers teaching foreign languages and/or culture or even working as assistants in Greek state schools were found.¹³⁷

Finally, even in light of the public discussion on same-sex civil unions, no public debate was held in 2019 on the potential clash between sexual orientation equality and freedom of religion. There is no indication as to whether the law would protect individuals in same-sex unions in this regard, especially since Greece is not a secular state (i.e. the Church is not separate from the state), and the Orthodox Church is strongly opposed to accepting same-sex couples and thus would be able to exclude LGBTQ and same-sex couples.¹³⁸

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Greece, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4) of Directive 2000/78/EC).

Article 3(5) of Equal Treatment Law 4443/2016 provides that:

‘The provisions of this chapter [Equal treatment in employment and occupation], in so far as they relate to different treatment on the grounds of age, disability or chronic illness, relevant to service, shall not apply to the armed forces.’

On 11 April 2012 Greece ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol through Law 4074/2012.¹³⁹ According to Article 2 of this Law, the provisions of Article 27(1) of the Convention do not apply to the armed forces and law enforcement agencies (due to a reservation made by Greece upon signing the UNCPRD) with regard to differential treatment due to disability as provided for in Article 3(5) of Equal Treatment Law 4443/2016 (which implements equal treatment pursuant to Articles 3(4) and 4 of Directive 2000/78/EC).

¹³⁶ Mavrommatis, G. and Tsitselikis, K. (2003), *Turkish: The Turkish language in Education in Greece*, available at: http://www1.faknaw.nl/mercator/regionale_dossiers/PDFs/turkish_in_greece.pdf.

¹³⁷ A comparative analysis carried out through desk research provided no results on migrant or minority teachers in Greek state schools.

¹³⁸ In fact, the Church challenged the legality of Law 4356/2015 before the Council of State, arguing, *inter alia*, that this legislative framework, which extends the right to enter into a civil union agreement to homosexual couples, offends the moral customs of the state of Greece, as listed in Articles 2 and 5 of the Constitution. On a positive note, the Council of State, in its decision No. 2003/2018, rejected the application as unfounded and unacceptable, as the judges considered the measure introduced by the aforementioned law constitutional and in accordance with the case law of the European Court of Human Rights and the Court of Justice of the European Union. It should be added that the Church is generally against civil union or partnership agreements, and that even heterosexual couples could face discrimination. However, this is not within the scope of the present examination.

¹³⁹ Law ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol, OJ 88 A/11.4.2012.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Greece, national law includes exceptions relating to difference of treatment based on nationality.

Adopting the wording of Article 3(2) of the two directives, Article 3(3) of the Equal Treatment Law incorporates all the exceptions allowed by the directives, including nationality and stateless status.

In Greece, nationality (i.e. citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

Moreover, Article 3(3) of Equal Treatment Law 4443/2016 stipulates that the anti-discrimination legal provisions do not cover difference of treatment based on nationality and are without prejudice to provisions and conditions relating to the legal status of third-country nationals and stateless persons residing on Greek territory.

There is no relevant case law.

b) Relationship between nationality and 'racial or ethnic origin'

According to the Greek legal system, there is little difference between 'nationality' and 'race or ethnic origin'. Nationality is perceived as citizenship. In recent decades, only people of Greek origin could obtain Greek nationality. Recently, the legislature has provided that Greek nationality can be obtained by people of non-Greek parentage. This distinction is particularly important in light of Article 3 of Law 4443/2016, which states that the law does not cover differences of treatment based on nationality and in relation to social protection, including social insurance and healthcare (meaning that discrimination based on nationality is permitted in relation to social protection).

4.5 Health and safety (Article 7(2) Directive 2000/78)

In Greece, there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78/EC).

Article 7(2) of Equal Treatment Law 4443/2016 provides that:

'With regard to disability or chronic illness, the introduction or maintenance of measures which aim to safeguard health and safety in the working environment or measures aimed at creating or maintaining the preconditions or facilitations for ensuring or encouraging the integration of disabled persons into the working environment, shall not constitute a discrimination.'

There are no other exceptions relating to health and safety law in relation to rules on ethnic origin or religion, where there may be issues of dress or personal appearance.

There is no relevant case law.

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

In Greece, national law provides an exception for direct discrimination on the ground of age.

Article 6(1) of Equal Treatment Law 4443/2016 allows the following exemption (defences) as far as the criterion of age is concerned, repeating the text of Article 6 of the Employment Equality Directive:

'Such differences of treatment may include, among others:

1. the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
3. The fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

Article 6(2) adds:

'Notwithstanding Article 2, the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of gender.'

There is no relevant case law.

There are no problems or conflicts with the requirements of the directive.

a) Justification of direct discrimination on the ground of age

In Greece, it is possible, either generally or in specific circumstances, to justify direct discrimination on the ground of age.

The relevant article is Article 6(1) of Equal Treatment Law 4443/2016.

There is currently no debate developing in Greece about the implementation of the requirements of the directive with regard to direct discrimination and, therefore, there is no way to verify if the test is compliant with the test in Article 6, Directive 2000/78/EC, account being taken of the decisions of the Court of Justice of the European Union in Case C-144/04, *Mangold*,¹⁴⁰ and Case C-555/07, *Kücükdeveci*.¹⁴¹

b) Permitted differences of treatment based on age

In Greece, national law does not permit differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC, except for the armed forces, as detailed in the remainder of this section (see above).

¹⁴⁰ Judgment of 22 November 2005, *Werner Mangold v. Rüdiger Helm*, C-144/04, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-144/04>.

¹⁴¹ Judgment of 19 January 2010, *Seda Küçükdeveci v. Swedex GmbH & Co. KG*, C-555/07, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-555/07>.

- c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Greece, national law allows occupational pension schemes to set ages for admission to the scheme or entitlement to benefits, taking up the opportunity provided by Article 6(2).

Article 6(2) of Law Equal Treatment Law 4443/2016 allows occupational pension schemes to set ages for admission to the scheme and entitlement to benefits.

There is no relevant case law.

4.6.2 Special conditions for young people and older workers

In Greece, there are special conditions set by law for older or younger workers in order to promote their vocational integration.

Article 6 of Equal Treatment Law 4443/2016 transposes Article 6 of Directive 2000/78/EC verbatim.

It is noteworthy that, in the Recommendations¹⁴² adopted by the plenary session of 20 November 2014 on the protection of older people from discrimination, the National Commission for Human Rights (NCHR) noted that the existence of a coherent legal framework for protection against discrimination on the ground of age is of fundamental importance, especially now that age has become the most common reason for discrimination in Europe.¹⁴³ The NCHR pointed out that prohibition of discrimination on the ground of age is not provided *expressis verbis* in most of the international Conventions for the protection of human rights.

It was also highlighted that both Article 19 of the Treaty on the Functioning of the European Union and Article 21 of the Charter of Fundamental Rights do, however, explicitly prohibit discrimination on the ground of age. According to the NCHR opinion, a general framework for combating discrimination in employment and workplaces has been established in Greece, under Law 3304/2005, in accordance with Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000, to ensure the application of the principle of equal treatment. Age discrimination was explicitly mentioned in Law 3304/2005. However, the NCHR noted that the above legislative framework was not considered as adequate for combating age discrimination, given that it was vague and was limited to a mere prohibition of discrimination on the ground of age.

The NCHR also noted that Law 3304/2005 exclusively concerned employment. Moreover, the fact that the legislative framework was not adequate had already been highlighted by the Council of Europe's Committee of Social Rights. The NCHR stressed that it had already identified the need to amend several articles of the law concerning the scope of equal treatment, positive action, occupational requirements and differences of treatment on the ground of age in order to make these provisions consistent with the letter of Directive 2000/78/EC.¹⁴⁴

Finally, the NCHR noted that attention should be given to combating stereotypes and prejudice against older people, which lead to discrimination against them (ageism). This phenomenon is associated with viewing older people as 'non-persons' or not the same people as they were before, or as people of a separate and lower category, simply because

¹⁴² GNCHR, Decision on the rights of Older Persons, 20.11.2014.

¹⁴³ Stangkos, P. (2014), 'Discrimination on the ground of age and the challenge of solidarity between generations in Greek and European Law', *Review of Labour Law*, vol. 73, p. 178.

¹⁴⁴ In its previous relevant Recommendations (2003 and 2010), the NCHR had stressed that the anti-discrimination law, Law 3304/2005, in order to incorporate Directive 2000/78/EC in a technically correct manner, should repeat provisions included in Law 3051/2002, according to which an upper age limit for hiring people for positions is abolished in both the public and private sectors (with exceptions).

they have passed through specific life stages. The negative impact of these stereotypes on older people's enjoyment of their fundamental rights should not be underestimated.

Equal Treatment Law 4443/2016 has not introduced any changes to this effect.

Concerning the protection of young persons from discrimination in the field of employment, Article 7 of Law 4358/2016¹⁴⁵ introduces a minimum age of 15 years for the employment of young persons, subject to specific exceptions, and a minimum age of 18 years for admission to employment for occupations regarded as 'dangerous' or 'unhealthy' – but without any further definition of the above terms.

4.6.3 Minimum and maximum age requirements

In Greece, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

However, under the provision of Laws 3051/2002, 3144/2003 and 3174/2003, maximum age limits have been abolished for both 'ordinary' personnel and compulsorily placed individuals (disabled people, subject to the provisions of Law 2643/1998) in relation to access or appointment to the public sector, public entities, local administration organisations (at levels a and b), and legal entities established under private law operating in the public sector.

Age is specified as a condition for participating in the competitive recruitment arrangements for court clerks, firefighters and armed and security corps and for the appointment of mediators and referees.¹⁴⁶ Younger and older people usually face restrictions and disincentives upon accepting or when maintaining a position.¹⁴⁷

Concerning the protection of young persons from discrimination in the field of employment, Article 7 of Law 4358/2016¹⁴⁸ introduces a minimum age of 15 years for the employment of young persons, subject to specific exceptions, and a minimum age of 18 years for admission to employment for occupations regarded as 'dangerous' or 'unhealthy' – but without any further definition of the above terms. The same article bans the employment of children who are still attending compulsory education, as this would deprive them of the full benefit of their education; and it limits the working hours of persons under 18 years of age. Finally, it forbids the employment of persons under 18 in night work and ensures their special protection against physical and moral dangers to which children and young people may be exposed, particularly those resulting directly or indirectly from their work.

According to the Explanatory Report on Law 4451/2017, Article 9 establishes the principle of non-discrimination in the field of access to employment in order to deal with an important question relating to the application of Directive 2000/78/EC on equal treatment in employment and work. As the Explanatory Report points out, this provision is in line with the requirements of the directive for EU Member States to eliminate provisions that differentiate access to employment without legitimate objectives being met in this specific area. The Explanatory Report emphasises that, at the level of national law, too, discrimination on the bases of racial or ethnic origin, religion or other belief, disability, age or sexual orientation is prohibited under the Constitution (Articles 2(1), 5(2), 13 and 21), which includes, in Article 4, the principle of equality before the law. Moreover, such

¹⁴⁵ Law 4358/2016 on the ratification of the Revised European Social Charter (OJ 5 A/20.01.2016).

¹⁴⁶ Information in this section was taken from the Greek Ombudsman's *Annual Report 2012*, available in Greek at: www.synigoros.gr/resources/docs/stp_ethsia_2012.pdf. In 2012, the Ombudsman received seven complaints on discrimination on the ground of age.

¹⁴⁷ National Centre for Social Research (2012), *Combating discrimination in Greece: State of the art, challenges and policy interventions*, p. 56, available at http://ekke.gr/ocd/wp-content/uploads/2014/01/EKKE_discrimination_book_en.pdf.

¹⁴⁸ Law 4358/2016 on the ratification of the Revised European Social Charter (OJ 5 A/20.01.2016).

prohibitions concern legal relations in both the public and private sectors (Article 25(1) of the Constitution).

In order to comply with the above legislative framework, the Greek Ministry of Foreign Affairs took an initiative to amend the relevant articles of its internal statute, removing the upper age limit for the recruitment of employees for all branches of the Ministry.

The Greek Ombudsman had considered a plethora of petitions concerning the arbitrary and abusive determination of maximum age requirements in order for people to have access to professional activities, with no specific reasoning concerning the use of age as a criterion for access. In the vast majority of these cases, the justification provided by the Administration – when there was no complete lack of justification– was indefinite and inadequate and was not based in objective evidence. The efforts of the Ombudsman are focused on familiarising the Administration with the obligation to specifically justify any maximum age requirement determination, with an undertaking to act towards the revocation of arbitrary age constraints, especially when such constraints are a result of stereotypical remnants or prejudice. Usually, people belonging to older age groups are excluded from the possibility of accessing a plethora of professional activities, based on the indiscriminate assumption that the said people lack characteristics – immediately connected to their age– which would have allowed them to effectively fulfil their duties.

In 2017, a case¹⁴⁹ involving a 40-year upper age limit to fill a post in the distribution sector of the Greek Post Office was indicative. The Greek Post Office supported the need to preserve this specific maximum age requirement, contending that the duties required special physical capabilities that do not exist in people over this age. The Ombudsman insisted that the Greek Post Office must quote specific, objective evidence (e.g. the exact tasks required in the sector, the ways and means of pursuing those tasks, the number of employees per age group, etc.), so as to allow for an audit of this special reasoning and its inclusiveness.

A further relevant case concerned the determining of an upper age limit of 40 years for university graduates and 28 years for school graduates in a staff recruitment notice by the Hellenic Railways Organisation. The ministerial order defining a specific age limit had been enacted 11 years before Law 4443/2016 and, as a result, there was a complete absence of any special reasoning about its necessity. The Hellenic Railways Organisation, referring only to staff with primary school education, ineloquently connected their young age to the physical and mental capability and stamina required for these specialties, as well as referring to the need to undertake two years of theoretical and practical training in order to perform the duties in these posts. At the same time, it invoked the ageing of the existing service staff, but without numerically supporting its claim in documenting the need to hire younger people for these specialties. Consequently, there was no specific justification in the sense that Law 4443/2016 establishes (case references 225783, 226954, 227095, 227269, 227802, 227834, 227866, 227937, 227986, 228161, 228239, 228349, 234896 and 235361).

Law 4528/2018,¹⁵⁰ which was passed in March 2018, repealed Article 2(2) of Law 4368/2016,¹⁵¹ which provided for an upper age limit of 50 years for applying for a position of specialist doctor at the Deputy B' grade in the Greek National Health System (NHS). The Ministry of Health, and subsequently the Parliament, took into account a previous advisory opinion of the Ombudsman, which had investigated a prior individual complaint in the context of his duties as an actor responsible for the supervision and promotion of the

¹⁴⁹ Greek Ombudsman, *Annual Report 2017*, (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2017*), p. 80, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

¹⁵⁰ Law 4528/2018 on the Hellenic Pasteur Institute and other provisions (OJ 50 A/16.03.2018).

¹⁵¹ Law 4368/2016 on measures for the acceleration of governmental work and other provisions (OJ 21 A/21.02.016).

principle of equal treatment in both the public and private sectors (in accordance with anti-discrimination Law 4443/2016).

This advisory opinion had stated that the specific age limit for accessing the position of specialist doctor constituted direct discriminatory treatment on grounds of age, since it does not seem to be justified. More particularly, as the Ombudsman had mentioned, when the age limit is a prerequisite for accessing work, then it must be proved that it is a characteristic of substantial importance linked with the ability to exercise the specific professional activity. Therefore, it must be proved that an age limit requirement is proportionate and necessary in order to attain a legitimate aim in the specific context. The necessity test requires those concerned to demonstrate that there are no less restrictive methods to achieve the legitimate aim in question.

Thus, all regulatory provisions setting a maximum age limit for access to specific sectors or to obtain specialist qualifications must fulfil all the above-mentioned criteria. The Ombudsman held that, even if the legitimate aim of the use of the age limit was to ensure that patients would not be exposed to risks related to potential incapacity due to the old age of doctors, this aim cannot justify the strictness of the measure or the fact that the age limit constitutes such a substantial characteristic for the exercise of the specific position's duties.

According to the Ombudsman's *Annual Report 2017* (published in 2018),¹⁵² however, upper age restrictions still exist in practice as a criterion for being hired for a job role. The Administration is gradually appearing to acknowledge that it is an institutionally required obligation to specifically justify upper age limits for access to employment. Some ministerial decisions include more specified justifications than was the case in the past, without, however, achieving a separation of age from the candidates' physical condition and their ability to carry out the duties of the advertised posts.

According to the Ombudsman's *2018 Special Report on Equal Treatment*¹⁵³ (covering 2018, published in August 2019), over a period of several consecutive years, a 68-year-old social worker responded to calls for temporary substitute and hourly-paid teachers in the public education system. In 2018, the social worker realised that it was no longer possible to participate in this recruitment procedure, because the maximum age of candidates was 67. The Ombudsman pointed out to the Ministry of Education that many substitute and hourly-paid teachers may have worked for many years in this field, offering their services without any problems, but they had yet to accumulate the minimum length of pensionable service. Therefore, because of the age limit, they were now deprived of the ability to acquire pension rights: they were suddenly excluded from the recruitment procedure simply due to their age, not because they lacked standard or essential qualifications (case 243576). The ministry did not respond to the Ombudsman's request for a change in the procedure.

Another case in the same report concerned a mechanical engineer seeking work in a large petroleum company, who was excluded because he was over 35 years of age.¹⁵⁴ During the inquiry into this case, evidence arose that the company's objectives (continuing to use newly-recruited personnel in key positions, with an assurance that they remain in these positions for a reasonable period of time prior to retirement) could also be met by persons who were older than the age stated in the relevant notices. Therefore, the Ombudsman sent a strong recommendation to the company in relation to the setting of specific age limits in upcoming notices (case 239377). There is no information on the extent to which the company adjusted its policy to the above recommendation.

¹⁵² Greek Ombudsman, *Annual Report 2017*, (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2017*), p. 208, available in Greek at: <https://www.synigoros.gr/resources/ee2017-p00.pdf>.

¹⁵³ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2018*), p. 32, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

¹⁵⁴ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2018*), p. 29, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

A significant point in this case is that, during the specific period in question (2006-2007), permanent appointments amounted to 40 % of recruitment, and these individuals were selected from the unified table of substitute and hourly-paid teachers. The court had ruled that, since the applicant was 67 years old and the infringement was associated with her expectation of permanent appointment, she could no longer be offered a permanent appointment given that permanent teachers are automatically dismissed from the service at the end of the teaching year during which they reach the age of 67. Nevertheless, the Council of State issued rulings in 2015 which deemed that the provisions regarding permanent appointments as a percentage of the table of substitute and hourly-paid teachers contravened the constitutional principles of equality and meritocracy and were therefore invalid.¹⁵⁵

As a result, the recruitment of substitute and hourly-paid teachers is now disassociated from permanent appointments. Additionally, the Ombudsman pointed out that these employees' rights to a pension must also be taken into consideration.

The Ombudsman emphasised that, although a large number of substitute and hourly-paid teachers had worked freely for a number of consecutive years in the education sector, they had still not reached the required, minimum length of pensionable service, thus they were deprived of the ability to establish entitlement to a pension when they were suddenly excluded from participating in the recruitment procedure due to their age – and not because of a lack of formal qualifications or essential skills. The ministry did not respond.¹⁵⁶

4.6.4 Retirement

a) State pension age

In Greece, there is a state pension age (at which individuals must begin to collect their state pensions);¹⁵⁷ however, this applies only to civil servants (see below). In the private sector, individuals can either retire at the age of 62 and collect a reduced pension (unless they have been insured for at least 40 years, in which case they will receive a full pension), or they can retire at the age of 67 and be awarded a full pension.¹⁵⁸ Therefore, according to Article 1 of Law 4093/2012, individuals may work for longer in the private sector if they wish to.

An individual cannot collect their state pension and still work. If an individual wish to work for longer (for a different employer),¹⁵⁹ then no legal provision allows the collection of pension benefits prior to their retirement. Thus, only when people retire may they collect state pension benefits. This means that a civil servant would have to file a petition to retire first and then start working for a private employer in order to collect state pension benefits. It should be highlighted, however, that, in such cases, the worker will not be awarded the full amount of their pension (because they will be insured for their new work position under a different insurance scheme than that which applies to the private sector).

¹⁵⁵ See Council of State rulings 527/2015, 2947/2015 and 4092/2015.

¹⁵⁶ Under Article 4 of Law 3094/2003, as amended by Law 4443/2016, the authorities must respond to the Ombudsman's request. However, there is no provision which enforces this. Generally, the powers of the Ombudsman are non-binding.

¹⁵⁷ The state pension age varies and corresponds to specific categories which combine years of service with age, gender and family status.

¹⁵⁸ For occupations characterised as hard and unsanitary (*βαρέα και ανθυγιεινά*), i.e. with hazardous working conditions, individuals may be awarded a full pension at the age of 62 as long as they have been insured for 4 500 days, 3 375 of which must include hazardous work.

¹⁵⁹ In Greece there is a mandatory retirement age in the public sector, which requires an individual to resign. However, this does not mean that the individual does not have access to employment under a different employer.

Law 3845/2010¹⁶⁰ was introduced in July 2010, equalising the retirement ages for men and women and the calculation of pensions.

Since 2010, significant changes have been made for mothers of minor children. Their pensionable age has increased by 15 years, with changes to the provisions for the required years of work resulting in an increase from 17.5 to 25 years of service. Under the legislation now in force, pensions will not be awarded before the age of 60 years (pensionable age). Even reduced pensions are adjusted to this age limit, and the difference in retirement age for the parents of more than three children is no longer valid.

In practice, people in older age groups often choose to retire early in order to avoid being subject to negative treatment or feelings of educational inferiority and limited occupational adaptability. This is due to the fact that older people face stereotyping regarding their age (e.g. lack of strength, poorer health, lack of physical agility and endurance, outdated education, etc.).

The advanced age of certain workers has in the past – prior to the adoption of equal treatment legislation – constituted a reason for their being dismissed. There were cases where workers had reached full pension age and were dismissed on this basis.¹⁶¹ This put workers in a worse position than those who had reached the full pension age, but who were nonetheless dismissed on other grounds (allowing them to claim compensation in addition to their pension). Now, since the adoption of Equal Treatment Law 4443/2016, people who have been dismissed because they reached their pensionable age can claim 50 % of the compensation for being dismissed (or 40 % if they are in a subsidiary insurance scheme).¹⁶² Older people are also forced to overcome other difficulties concerning their access to or reintegration into the job market, because they have been unemployed for a long time, they were dismissed a few years before reaching retirement age or because of the lack of adequate infrastructure for the care of vulnerable groups.¹⁶³

There is no relevant case law.

b) Occupational pension schemes

In Greece, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. This 'normal age' is not fixed, but it is determined by the sector-related pension scheme that each person belongs to.

According to Article 1 of Law 4093/2012, individuals may work for longer if they wish, but only in the private sector. If an individual wish to work for longer, payments from such occupational pension schemes can be deferred.

There is no legal provision allowing a person to collect a pension and still work. Yet this does not necessarily mean that a person is not allowed to do it. However, given the way the social insurance framework is structured, it would be highly unlikely, in practice, that the person would receive the full amount.

¹⁶⁰ Law 3845/2010 on measures for the implementation of a mechanism of support for the Greek economy from the Member States of the eurozone and the International Monetary Fund (OJ 65 A/06.05.2010).

¹⁶¹ Decision 33/2006 of the Authority for Personal Data Protection. In this case, an employer requested information from his workers in order to identify those who were of pensionable age. The Authority stated that this was clearly discriminatory on the ground of age. Available in Greek at: www.dpa.gr/portal/page?_pageid=33%2C15453&_dad=portal&_schema=PORTAL&_piref33_15473_33_15453_15453.etos=2006&_piref33_15473_33_15453_15453.arithmosApofasis=33&_piref33_15473_33_15453_15453.thematikiEnotita=-1&_piref33_15473_33_15453_15453.ananeosi=%25.

¹⁶² Individuals who will be granted a reduced pension or a pension due to disability can claim the full amount of the compensation if they are dismissed.

¹⁶³ Information in this section was taken from: 50+, *Position paper on active and healthy aging* (2013) (50καιΕλλάς: Θέσεις και προτάσεις για την ενεργό και υγιή γήρανση στην Ελλάδα), available at: www.50plus.gr/images/files/50kaiHellas_Position_Paper_on_Active_and_Healthy_Ageing.pdf.

There is no relevant case law.

c) State-imposed mandatory retirement ages

In Greece, there is a mandatory retirement age of 67 years, which is constitutionally established for certain public servants – for both men and women equally. There is no mandatory retirement age in the private sector.

In particular, Article 16(6) of the Greek Constitution provides that university professors may not exceed the age of 67, whilst Article 118(1) of the Constitution provides that judges may not exceed the age of 67.

There have been no recent changes in this respect, and none are planned in the near future.

As was mentioned previously, there is also a mandatory retirement age for civil servants (67 years of age after the completion of 40 years of service for a full pension or 62 years of age after the completion of 15 years of service for a reduced state pension).¹⁶⁴

d) Retirement ages imposed by employers

In Greece, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

There are still company operating manuals and corporate charters (mainly of banks and state enterprises) which provide for different retirement ages based on gender (women having to retire at a lower age). However, these provisions, by virtue of Law 4443/2016, the equal treatment law, can no longer be applied. On the other hand, under the terms of collective labour agreements, other binding regulatory provisions still exist (mainly the aforementioned bank corporate charters), which permit employers to require employees to retire because they have reached a certain age. Nevertheless, under the terms of the equal treatment law, these provisions have been nullified (and are therefore no longer in force), as they are not in conformity with the law's requirements. In this respect, the law on protection against dismissal could apply to all workers, irrespective of age, although – as has been stressed before – these issues have not yet been properly and seriously examined.

e) Employment rights applicable to all workers irrespective of age

The national law on protection against dismissal (Law 2112/1920¹⁶⁵ and Law 3198/1955)¹⁶⁶ applies to all workers, irrespective of age. Therefore, these rights are not lost on attaining pensionable age or another age.

f) Compliance of national law with CJEU case law

In particular, Article 6 of Law 4443/2016 is in line with cases C-229/08 *Wolf*, C-499/08 *Andersen*, C-144/04 *Mangold* and C-555/07 *Kücüdevici*, C-87/06 *Pascual García* [2006], and cases C-411/05 *Palacios de la Villa* [2007], C-488/05 *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform* [2009], C-45/09, *Rosenbladt* [2010], C-250/09 *Georgiev*, C-159/10 *Fuchs*, C-447/09 *Prigge* [2011], C-262/14, *SCMD* [2016], C-143/16, *Abercrombie & Fitch Italia Srl*, [2017], and C-46/17, *Hubertus John* [2017].

¹⁶⁴ Article 1(IA.4) of Law 4093/2012 (OJ 222 A/12.11.2012).

¹⁶⁵ Law 2112/1920 on the mandatory breach of contract (OJ 67 A/18.03.1920).

¹⁶⁶ Law 3198/1955 on the amendment of the mandatory breach of contract (OJ 98 A/23.04.1955).

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Greece, national law permits age or seniority to be taken into account in selecting workers for redundancy.

In line with the EU Directive 98/59, Law 1387/1983 defines collective redundancies as 'dismissals effected by an employer for one or more reasons not related to the individual workers concerned' (Article 1). The legislation does not refer specifically to economic and technical reasons. However, reasons that have been accepted by the courts as being related to the individual worker include those related to the behaviour or ability of the worker or those related to the personal situation of the worker (e.g. illness or retirement).¹⁶⁷

b) Age taken into account for redundancy compensation

As far as compensation for redundancy is concerned, this is affected by the number of years the employee has worked for one employer. It could be said that compensation is hence indirectly affected by the age of the worker.

In Greece, national law provides compensation for redundancy, since there is no specific exception for this kind of compensation in the relevant Laws 2112/1920 and 3198/1955 that concern the private sector. Therefore, this is affected by the age of the worker.

There is no relevant case law.

4.7 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Greece, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

According to Article 2b of Law 4443/2016, there is no indirect discrimination if a measure or practice is objectively justified by a legitimate reason and the measures taken are necessary for the maintenance of public security, to ensure public order, to prevent criminal offences, for the protection of health and freedoms of others or when the measures are taken in favour of persons with disabilities, in accordance with Article 21(6) of the Hellenic Constitution and Article 5 of Law 4443/2016 (i.e. reasonable accommodation).

4.8 Any other exceptions

In Greece, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

¹⁶⁷ Court of Appeal of Thessaloniki 2840/1987, in *Revue de Droit du Travail* (1987), vol. 44, p. 88 (in Greek).

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Greece, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is permitted in national law.

Article 7 of Equal Treatment Law 4443/2016 enshrines Article 5 of Directive 2000/43 and Article 7 of Directive 2000/78. It reiterates that any measures adopted for promoting and ensuring equal treatment are not considered to be discrimination.

Moreover, the adoption of positive measures for promoting equality is an obligation imposed upon the state under Article 116(2) of the revised Constitution.

This provision, in conjunction with Articles 21(3) and 21(6) of the Constitution, is perceived as guaranteeing the principle of 'proportional equality' and assisting in the 'elimination of existing inequalities'.

Even though the main preoccupation of the Constitution of 2001 is obviously the promotion and protection of women's rights, the wording of Article 116(2) is all-inclusive, laying down an obligation on the state to act through positive measures for the elimination of all kinds of 'inequalities', a term that undoubtedly pertains to discrimination on all grounds covered by Directive 2000/78/EC, given that it has been transposed into the Greek legal system.

Greek case law, especially that of the Greek Council of State, accepted and established the legitimacy of legislative or administrative positive action measures aimed at the advancement of gender equality even before the above new provision of the Constitution. The majority opinion of the Greek Council of State, in its judgment 1917/1998,¹⁶⁸ explicitly recognised that there may be cases which show that, in practice, a certain category of individuals has been discriminated against 'due to social prejudice', leading to only nominal equality. Concomitantly, the court stated that, in principle, the spirit of Articles 4(1) and 4(2) of the Constitution (the latter provision stating that 'Greek men and women have equal rights and obligations') allows the state to take appropriate and necessary 'positive action' for a certain period of time, until the existing situation of inequality has ceased. The Greek Council of State concluded that, in principle, it would certainly be legitimate for the Greek State to adopt 'positive measures' for women, in so far as these measures are aimed at 'accelerating the restoration of *de facto* equality between men and women'.

This jurisprudence was affirmed by the same court's Judgment 1933/1998,¹⁶⁹ where 'positive action' in favour of women by the state was regarded as justified and was founded not only on the Constitution, but also on Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions (Article 2(4)), as well as on Article 4(1) of the UN Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (which has been ratified by Greece). The wording of the Greek Supreme Administrative Court judgments is almost identical to that of the UN Convention provision. This significant case law, along with the constitutional provision of Article 116(2), should certainly be regarded as a basis for the establishment of positive action by Greece in favour of racial and ethnic groups, as well as other grounds upon which discrimination occurs *de facto* and/or *de jure*.

¹⁶⁸ Greek Council of State judgment 1917/1998 (Plenary). *Επιθεωρήσεις δημοσίου δικαίου και διοικητικού δικαίου* (1998), vol. 42 (*Review of public and administrative law*), p. 577 (in Greek). Article 6 of Law 2839/2000 also established in principle a quota of one third in favour of women with regard to posts on boards of public and private organisations.

¹⁶⁹ *Επιθεωρήσεις δημοσίου δικαίου και διοικητικού δικαίου* (1998), vol. 42 (*Review of public and administrative law*) p. 585 (in Greek). On the right to equality, see also Greek Council of State judgments 1156/2000 and 2096/2000, *To Syntagma* (2000), vol. 26, pp. 927 and 1 288 respectively (in Greek).

Finally, as far as persons with disabilities are concerned, in July 2019 the National Commission of Human Rights made a set of recommendations in which it called for the Greek state:¹⁷⁰

- To take more targeted measures to implement the principle of equal treatment in the employment of persons with disabilities and to measure their effectiveness through the use of concrete benchmarks and indicators. It also called for the state to keep diversified statistical data on persons with disabilities with additional vulnerability, namely women, children, elderly persons, migrants etc.
- To intensify its efforts to achieve better results regarding the transition of persons with disabilities from sheltered workshops to the open labour market, and to introduce new forms of social cooperative enterprise guaranteeing the right to work for persons with disabilities.
- To take measures to mainstream the dimension of disability into the policy design of the OAED (Manpower Employment Organisation).
- To re-establish the procedure for concluding national general collective agreements (NGCAs) and implementing their full content, scope and binding force with a view to maintaining the NGCA as the key institutional instrument guaranteeing the general interest and the interests of workers.

b) Quotas in employment for people with disabilities

In Greece, national law provides for quotas for the employment of people with disabilities.

A number of measures exist in Greece to promote the employment of persons with disabilities. A quota system exists whereby a quota of jobs is reserved for people from certain vulnerable groups in the population and includes persons with disabilities.

Articles 1 and 2 of Law 2643/1998,¹⁷¹ as amended, provide that both private enterprises and public sector bodies that employ more than 50 persons are subject to the quota.

According to Article 2, the quotas amount to 8 % for the private sector and 10 % for the public sector.

Moreover, according to Article 3 of Law 2643/1998, public services, legal persons of public law and the local administration are obligated to appoint or hire persons with disability, without a selection or open call procedure, in order to cover 5 % to 7 % of any available placements.

As far as sanctions are concerned, Article 12(1) of the Law provides for the imposition of a fine equal to six monthly salaries for private sector, under an order issued by the competent labour inspector. This fine is added as a tax burden to the entity if it is not paid on time (Article 12(3)). Although there are no specific sanctions for the public sector, the latter is obliged in any case to implement the relevant legislation, and any possible non-compliance would result in a breach of duty. However, there are no available data concerning the imposition of fines, and thus it is difficult to determine how this measure works in practice.

¹⁷⁰ The NCHR report is available at: http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/GNCHR%20Shadow%20Report%20on%20the%20Rights%20of%20Persons%20with%20Disabilities%20CRPD.pdf.

¹⁷¹ Law 2643/1998 on care for the employment of persons of special categories and other provisions (OJ 220A/28.09.1998).

There is no case law or data on the number of persons with disabilities employed in the public sector and the civil service, and therefore there are no data on the levels of compliance with the quota(s).

However, there have been a number of judgments in cases brought by individuals who were not hired, where public or private enterprises are condemned for not applying the quotas and are ordered to pay compensation and hire the individual.¹⁷² This means that an individual disabled person has a right to be hired under the quota.

On 14 March 2019, the National Confederation of Persons with Disabilities (ESAMEA)¹⁷³ found that Article 25 of Law 4440/2016,¹⁷⁴ which introduced an obligation to allow for a 10 % quota in vacancies in municipalities and communities to be filled by persons with at least 50 % disability, had been amended and that the 10 % quota was no longer foreseen for such vacancies. ESAMEA also emphasised that, in Proclamation 2K/2019 of the Supreme Council of Personnel Selection, concerning the filling of a priority order of 1 116 full-time posts in the Ministry of Health, the quota under Article 25 of Law 4440/2016 had not been observed. Finally, it stated that 'the above exclusion constitutes discrimination and blatant violation of fundamental rights and is contrary to the laws of Greece,' referring in particular to Article 21(6) of the Constitution, which stipulates that 'persons with disabilities have the right to enjoy measures ensuring their autonomy, professional integration and participation in the social, economic and political life of the country', and to Article 27 of the UN Convention on the Rights of Persons with Disabilities, which our country ratified, together with its Optional Protocol, by Law 4074/2012.

¹⁷² See, for example: Administrative Court of Appeals of Athens Decision No. 378/2015, Greek Council of State Decision No. 879/2017, Appeals Court of Patra Decision No. 735/2006, Appeals Court of Athens Decision No. 8728/2006.

¹⁷³ The ESAMEA press release is available in Greek at: <https://www.esamea.gr/pressoffice/press-releases/4155-i-kybernisi-katargei-stin-praxi-nomo-gia-tin-ergasia-ton-amea-poy-i-idia-psifise>.

¹⁷⁴ Law 4440/2016 on a unified system of mobility in public administration and local administration (Νόμος 4440/2016 για το 'ενιαίο σύστημα κινητικότητας στη δημόσια διοίκηση και στην τοπική αυτοδιοίκηση') (ΟJ 224 Α/02.12.2016).

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Greece, the following procedures exist for enforcing the principle of equal treatment (judicial, administrative, or alternative dispute resolution such as mediation).

Firstly, Article 8 of Equal Treatment Law 4443/2016 enshrines Article 7 of Directive 2000/43 and Article 9 of Directive 2000/78.

A victim of discrimination in the private sector, including in the field of employment, can raise a complaint before the Greek civil courts and criminal courts, or can choose, through his/her attorney, to reach an extrajudicial settlement, even through mediation.

A victim in the public sector, including in the field of employment, can raise a complaint not only before the civil and criminal courts but also before the administrative courts (in accordance with the jurisdictional requirements related to the competence of the courts).

People with disabilities are entitled to request information to be supplied and/or trials to be held using alternative formats, for example using sign language or information in Braille. All the courts are physically accessible for people with disabilities (e.g. wheelchair users). There are administrative procedures which allow for the inspection of workplaces, schools and public buildings (i.e. inspections in relation to people with disabilities and their needs).¹⁷⁵

According to Article 44 of Law 3386/2005,¹⁷⁶ as amended by Article 42 of Law 3907/2011,¹⁷⁷ if a criminal prosecution has been initiated, victims of criminal acts under Articles 1 and 7 of the basic Anti-racism Law 927/1979¹⁷⁸ may be granted a residence permit on humanitarian grounds until the judgment is issued. If the victims are undergoing medical treatment, the duration of the permit is extended until the treatment is completed, regardless of its relevance to the crime.

The above procedures are binding in both the private and public sectors.

b) Barriers and other deterrents faced by litigants seeking redress

The principal barrier that litigants face is the requirement to instruct a lawyer, because the fees are very high for the victim.

Moreover, on 30 January 2011, in accordance with Ministerial Decision KYA 123827//23-12-2010, the fee that has to be paid to the police in order to register a complaint before the criminal courts was increased by 900 % (EUR 100 instead of EUR 10). This seems to constitute a deterrent to seeking redress.

There is no separate procedure for legal aid in relation to discrimination cases. The general procedure applies. Responsibility for legal aid is shared between the Ministry of Justice, the courts and the bar associations. In civil, administrative and criminal cases, a person who lacks the financial means to pay for legal aid submits an application to the Ministry of

¹⁷⁵ Ministry of Interior (2007), *Οδηγός του Πολίτη με Αναπηρία (Guide for disabled citizens)*, Chapter 2.8, available in Greek at: http://www.nath.gr/photos/amea_2007.pdf.

¹⁷⁶ Law 3386/2005 on the entry, stay and social integration of third-country nationals in Greek territory (OJ 90 A/18.04.2013).

¹⁷⁷ Law 3907/2011 on the establishment and organisation of the Asylum Service *et al.* (OJ 7 A/ 26.01.2011).

¹⁷⁸ Law 927/1979 on penal sanctions for acts of discrimination based on race (OJ 139 A/28.6.1979).

Justice. A judge or justice of the peace reviews the application and decides whether to grant legal aid. This decision is appealable to a three-judge district court. Each bar association creates a list of lawyers who are on duty to provide legal aid services.

Time limits are very strict (there is a three-month period in which to file a complaint), regardless of sector.¹⁷⁹

On the other hand, individuals can bring a case after the employment relationship has ended (because of either dismissal or resignation) in both the private and public sectors within a time period set out in the employment agreement.

c) Number of discrimination cases brought to justice

In Greece, statistics on the number of cases related to discrimination which have been brought to justice are not available.

d) Registration of discrimination cases by national courts

In Greece, discrimination cases are not registered as such by national courts.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Greece, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

Article 8(3) of Law 4443/2016 states that: 'legal persons, unions or organisations including social partners and trade unions, whose purpose also includes the safe-guarding of the principle of equal treatment regardless of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics, may represent the injured party before the courts and represent them before any administrative authority or organ, as long as he/she provides in advance his/her consent through a notarial document or private document, which will bear their certified signature'.

However, there were no instances in 2019 or in previous years of NGOs or trade unions providing legal support (acting on behalf of the victim) and representation to victims of discrimination.

The categories of legal entities authorised to defend victims of discrimination is very restricted, since it includes only those which have the guaranteeing and protection of the principle of equal treatment as a statutory aim (Article 8(3)). There has been no broad interpretation of this article so far such that any organisation involved in human rights issues could be legitimised. Current legislation does not specify the types of legal entities concerned, and therefore all forms described in the Civil Code fall, in theory, within the scope of national law (associations, non-profit organisations, syndicates and union groups).

The criteria demanded within the framework of Equal Treatment Law 4443/2016, in combination with the general requirements laid down by Greek procedural statutes (Article 62 of the Code of Civil Procedure), are: (a) that NGOs and/or trade unions have 'a legitimate interest in ensuring the application of the principle of equal treatment'. This means that any intervening organisations should have as their objective the effective implementation of the principles laid down by the law; and (b) that the victim has given

¹⁷⁹ Article 117(1) of the Greek Criminal Code (P.D. 283/1985, as amended) (OJ 106 A/31.05.1985).

their consent to the organisation, stating that they want and agree to be represented by that organisation. It goes without saying that, under the Greek Code of Civil Procedure, the NGO or trade union must be represented in court by an accredited lawyer. In other words, NGOs that wish to act on behalf of a victim must hire an accredited lawyer, which can be quite costly. Moreover, the only permitted forms of authorisation are either an official notarised document or a private document with an officially authorised signature (Article 8(3) of Equal Treatment Law 4443/2016). There are no special provisions on victim consent in cases where obtaining formal authorisation is problematic.

Moreover, in order for the aims of the relevant provision to be fulfilled, it does not suffice for the aforementioned legal entities to be able to represent discrimination victims; they must also be able to act in their own name. In this way, discrimination victims will be encouraged to report infringements of their rights without fear of retaliation by their employers. In this area, the NCHR¹⁸⁰ has emphasised the need for an explicit provision to the effect that a negative *res judicata* in a case that was filed by a legal entity in its own name will not be binding for the discrimination victim.

Action by all associations is discretionary.

Associations may engage in all types of proceedings (civil, administrative or criminal), in accordance with Article 8(3) of Equal Treatment Law 4443/2016.

There are no specific rules on shifting the burden of proof where associations are engaged in proceedings.. The law does not explicitly state that the burden of proof is shifted specifically in cases where the victim is represented by an organisation. However, it is implied, given that the law states that when an individual claims to have been subject to discrimination, there is a shift in the burden of proof.

- b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Greece, associations, organisations and trade unions are entitled to act in support of victims of discrimination.

They are entitled to act in support of victims by joining already existing proceedings according to Article 82 of the Code of Civil Procedure, which provides for the possibility of 'additional intervention' in a court process (but only under the strict general requirements laid down by Article 62 of the Code concerning 'legitimate interest', the consent of the victim to be represented, a lawyer's authorisation, etc.). Moreover, Article 8(4) of Law 4443/2016 further states that legal persons may also intervene (*πρόσθετη παρέμβαση*) in the court proceedings examining a discrimination case before the civil or administrative courts free of charge (i.e. they do not have to submit a separate court fee, called *πράβολο*).

Action by all associations is discretionary.

Associations may engage in all types of proceedings (civil, administrative or criminal), according to Article 8(4) of Equal Treatment Law 4443/2016, which refers to the procedures contained in Article 8(3) thereof.

There are no specific rules on shifting the burden of proof where associations are engaged in proceedings. However, since they are participating in support of the victim (and not as a party to the proceedings), a shift in the burden of proof shall apply.

¹⁸⁰ NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005 (Observations on Law 3304/2005)*, available in Greek at: www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf.

c) *Actio popularis*

In Greece, national law does not allow associations, organisations or trade unions to act in the public interest on their own behalf without a specific victim to support or represent (*actio popularis*). There was no discussion concerning *actio popularis* when Law 4443/2016 was being introduced.

There is no legal provision for *actio popularis*.

d) Class action

In Greece, national law does not allow associations, organisations or trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event. There was no discussion concerning class action when Law 4443/2016 was being introduced.

There is no legal provision for class action.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Greece, national law requires a full shift of the burden of proof from the complainant to the respondent (in civil law cases). This means that the respondent has to prove that the complainant has not been discriminated against (exceptions apply to criminal procedures where the principle of 'innocent until proven guilty' means that the civil party should prove beyond doubt that the defendant is guilty).

The burden of proof in cases where anti-discrimination law has been violated is covered in Article 9 of Equal Treatment Law 4443/2016, which stipulates:

- '1. when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment;
2. Paragraph 1 shall not apply to criminal procedures;
3. Paragraph 1 shall also apply in the case of Article 8, para.1.'

There was no provision for a shift of the burden of proof before Law 3304/2005 was enacted. This provision is now repeated by Equal Treatment Law 4443/2016.

However, it should be highlighted that the burden of proof is not totally shifted in administrative cases.

There is no known relevant case law specifically on the burden of proof.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Greece, there are legal measures of protection against victimisation.

Protection against victimisation includes such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the workplace, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 10 of Equal Treatment Law 4443/2016). In cases of adverse treatment or an adverse consequence in reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment in the field of racial or ethnic discrimination, the scope is wider than in employment and occupation, and it covers everyone, in both the public and private sectors,

in relation to the eight areas covered by Article 3(1)(a-h) of the Racial Equality Directive 2000/43/EC.

Given that witnesses play the most crucial role in supplying evidence under Article 9 of Equal Treatment Law 4443/2016, they may easily be considered as 'protected persons', as they fall within the definition of 'person' in Article 10, which provides that protection includes protection from dismissal or adverse treatment of a person (or persons) as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment.

According to the wording of Equal Treatment Law 4443/2016, the reversal of the burden of proof also applies to victimisation.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Article 11 of Equal Treatment Law 4443/2016 lists criminal sanctions (six months' to three years' imprisonment and a pecuniary fine of EUR 1 000 to EUR 5 000) and administrative sanctions (pecuniary fine of EUR 146 to EUR 805). The maximum fine imposed on the discriminator in criminal cases is EUR 5 000 (fine to be paid to the state). The maximum fine imposed on those responsible for discrimination in administrative cases is EUR 30 000 (fine to be paid to the state).

The victim can lodge an action for compensation before the civil courts for infringement of their personality rights in cases of 'unlawful harm' (Article 57 of the Civil Code). Compensation for moral damage can be awarded under Articles 920 and 932 (Restitution). Actions based on Civil Code violations and relevant restitution is available in administrative cases outside the field of employment through Articles 105-106 of the Introductory Law of the Civil Code (annexed to the Civil Code) when a public sector body or a public authority is liable. In employment cases, public sector employees may claim compensation before the administrative courts.

The new Criminal Code in Greece, which was introduced by Law 4619/2019¹⁸¹ and came into force on 1 July 2019 by replacing the previous Code of the year 1950, abolished Article 361B that concerned punishment of provision of goods and services in case this provision was based on grounds of discrimination. Article 361B had been introduced in the previous Criminal Code by Article 29 of Law 4356/2015. This Article used to punish specific activities of racist groups such as 'distribution of food as a charity only for Greeks'.

However, it should be highlighted that this repeal does not affect the general interdiction of discrimination regarding access to goods and services as stipulated by the Equal Treatment Law 4443/2016. Furthermore, Article 11 of Law 4443/2016 still foresees the relevant criminal sanctions also in the field of access to goods and services.

b) Compensation – maximum and average amounts

The sanctions included in Equal Treatment Law 4443/2016 include fines which must be paid to the state (for more information, see paragraph (a) above).

However, in civil cases – where the victim has lodged an application for compensation – the victim can be awarded compensation by the civil courts under the procedures described above. In this case, there is no maximum amount of compensation, since this is determined at the discretion of the civil court.

¹⁸¹ Law 4619/2019 'on ratification of Criminal Code' (Νόμος 4619/2019 'για την κύρωση του Ποινικού Κώδικα') (OJ 95A/11.06.2019).

There is no known case law concerning compensation to victims.

There is no information available on the average amount.

c) Assessment of the sanctions

There is no information available on the effectiveness of the sanctions. However, according to a written warning from the European Commission (No. 2005/2356) regarding the sanctions (as specified in Law 3304/2005), questions had been raised about their lack of proportionality. No measures have been taken in response to this warning. In fact, Law 4443/2016 on Equal Treatment maintained the exact same sanctions under Article 11.

Greek law expressly provides for a criminal law means of defence and penalties in cases of discrimination on racial, ethnic or religious grounds solely within the framework of Law 927/1979 (see Sections 2(2) and 2(3) on direct and indirect discrimination). The law as amended includes the grounds of sexual orientation, gender identity and gender characteristics and disability. Age is not included as a ground.

Article 57 of the Greek Civil Code is a generic provision that provides for the protection of everyone's personality in cases of 'unlawful harm'. This provision, in conjunction with Article 914 of the Civil Code, entitles the victim to damages and to demand termination of the harm to their personality and its non-repetition in the future. It also includes a court-imposed obligation to refrain from a certain act and/or to perform a certain act, such as to implement desegregation in the fields of housing and education.

In 2001, the National Commission for Human Rights proposed that Greek anti-racism legislation should expressly provide for vicarious liability in civil, administrative and criminal law.¹⁸² Vicarious liability is currently provided for only by Article 922 of the Greek Civil Code, under which an employer is held liable for any damage incurred by a third party due to action by the employer's staff. However, this issue did not come up during the discussions on the introduction of Law 4446/2016.

With reference to criminal procedures, the NCHR proposed the introduction of an alternative penalty consisting of an obligation to perform community service.

¹⁸² Greek National Commission for Human Rights (NCHR) (2001), 'Main aspects of racial discrimination in Greece - Proposals for the modernisation of Greek law and practice' in: NCHR, *Report 2001*, 20.12.2001, available in Greek at: www.nchr.gr/images/pdf/aithsies_ektheseis/2001/ekthesi2001_gr.pdf.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

National Commission for Human Rights

Prior to an examination of the equality body included in Equal Treatment Law 4443/2016, it is important to provide some information on the Greek National Commission for Human Rights (NCHR), which also plays an important role in the promotion of equal treatment. According to Law 2667/1998,¹⁸³ under which it was established, the NCHR, although it is not an 'equality body' as described in Law 4443/2016, has competence to examine the ways in which Greek legislation may be harmonised with the international law standards on human rights protection, and subsequently to submit relevant non-binding opinions to competent State bodies. The NCHR is the national human rights institution for Greece.

The contribution of the NCHR is important for general policy on the promotion of equal treatment because, through its unique structure – allowing representation in the decision-making processes of various stakeholders – it is able to advise the state on legislation and policy plans.

Equality body

The most important feature of the provisions of Equal Treatment Law 4443/2016¹⁸⁴ was the unification of separate jurisdictions – private and public – under one equality body, the Ombudsman, which has competence in the fields of employment, education and access to goods and services.¹⁸⁵

Under Article 12 of the Law, the Ombudsman is tasked with the monitoring and promotion of equal treatment, not only for the public sector but also for the private sector. At the same time, 10 more staff positions were created in 2017 so as to accommodate permanent legal officers or legal officers with open-ended private law contracts (on secondment). Law 4443/2016 also provides that the General Secretariat for Transparency and Human Rights of the Ministry of Justice, within the framework of its jurisdiction for the protection of human rights and the combating of all forms of discrimination, shall also participate in the promotion of equal treatment – without, however, being an equality body per se. In other words, the ministry shall, on a policy level, ensure adherence to equal treatment (when preparing legislative and policy actions). In the same spirit, the Social Protection Directorate of the Ministry of Labour will, *inter alia*, monitor the application of anti-discrimination policies in the field of labour and employment, inform employees and employers on issues related to discrimination in the field of employment and raise awareness, as well as providing scientific support to the Labour Inspectorate Body.

In fact, Article 16 requires cooperation amongst all of the aforementioned bodies, as well as with the Economic and Social Committee, the senior union organisations in the private and public sectors, the National Social Solidarity Centre, the National Centre for Social Research, the Centre for Equality Research, the Centre for Disease Control and Prevention and the Central Union of Greek Municipalities, as well as with civil society organisations with expertise on anti-discrimination. In reference to raising awareness and disseminating information, Article 17 stipulates that employers, as well as those in charge of vocational training, shall ensure the application of anti-discrimination provisions and shall provide the

¹⁸³ Law 2667/1998 on the establishment of a National Commission for Human Rights (OJ 281 A/16.12.1998).

¹⁸⁴ This law entered into force on 9 December 2016.

¹⁸⁵ Therefore, the Committee for Equal Treatment no longer has jurisdiction over discrimination in the private sector and has thus been abolished. Note that the previous anti-discrimination law, Law 3304/2005, had established the Equal Treatment Committee as an equality body, although it never functioned.

equality body with all the necessary information for the promotion of equal treatment, as per their mandate. The union organisations shall inform their members of the content of anti-discrimination provisions and of the measures that are carried out for the application and promotion of equal treatment.

b) Political, economic and social context of the designated body

There is no evidence of recent political support for the designated body – but neither is there any indication of hostility or interference.

The Ombudsman's budget was significantly cut in recent years due to the financial crisis in Greece. In 2009, the budget was set at EUR 10 085 418. In 2015 the amount was no more than EUR 6 045 000.¹⁸⁶ It should be noted that similar cutbacks were made to all public bodies in order to deal with the financial deficit in the state budget. For 2017, the budget was set at EUR 6 452 992, a minimal increase in comparison with the cuts of recent years. There was also an increase for 2018, with the budget set at EUR 6 679 902,¹⁸⁷ and a further increase for 2019, with the budget set at EUR 6 851 341.¹⁸⁸

Law 4443/2016 contained an article (Article 14b) which provided for 10 members to be added to the Greek Ombudsman's staff. However, no reference was made to the budget and how it would be affected. The call for applications showed that these positions are secondments.

c) Institutional architecture

In Greece, the designated body forms part of a body with multiple mandates.

The Greek Ombudsman is an independent authority, established by the Constitution (Article 103(9)). It was first created by Law 2477/1997 (Article 1) on 17 April 1997 as an independent authority (subject to the amendment by Equal Treatment Law 4443/2016). Prior to adopting its mandate as an equality body, the Ombudsman used to be responsible only for mediating between citizens and the administrative authorities in cases of maladministration. It now holds the following mandates:

- the mandate of its founding law, which includes, in addition to equal treatment, relations between citizens' rights and the administration, the rights of the child, arbitrary police action, torture and inhuman and degrading treatment (Law 2477/1997 as amended);
- an equal treatment mandate¹⁸⁹ (2005);
- a gender equality mandate (2009);
- a mandate for the equal treatment of men and women in the field of employment and occupation (2010);

¹⁸⁶ Information on the budget for 2009 to 2015 is available on the Greek Ombudsman's website at: <https://www.synigoros.gr/?i=stp.el.stoixeia-proipologismou>.

¹⁸⁷ Information on the 2018 budget is available on the Greek Ombudsman's website at: <https://www.synigoros.gr/resources/docs/pinakas-exsodwn-dekemvriou-2018.pdf>.

¹⁸⁸ Information on the 2019 budget is available on the Greek Ombudsman's website at: <https://www.synigoros.gr/resources/docs/pinakas-e3-anar-11-2019.pdf>.

¹⁸⁹ Under Anti-discrimination Law 3304/2005, the grounds of racial or ethnic origin, religious or other beliefs, disability, age, sexual orientation were initially covered. This Law was repealed and replaced by Equal Treatment Law 4443/2016, which extended the scope of protected grounds.

- following the adoption of Law 4488/2017,¹⁹⁰ the Ombudsman has been the designated monitoring framework for promoting the implementation of the UN Convention on the Rights of Persons with Disabilities (Article 33(2) UNCRPD).¹⁹¹

As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration and private employers. It basically acts as a mediator either between an individual and the public administration or between individuals and private employers. The Ombudsman does not impose sanctions or annul illegal actions by the public administration or private employers.

Following the introduction of Law 4443/2016, which added tasks to its jurisdiction as an equality body (such as the promotion of equal treatment and combating discrimination in the private sector in addition to the public sector), the Ombudsman set up a special section in preparation for its extended role. Known as the 'Equal Treatment Cycle' (*Κύκλος Ίσης Μεταχείρισης*), it focuses on promoting equal treatment and combating discrimination based on gender, national or ethnic origin, religion or religious freedom, disability, age, sexual orientation or gender identity.

As stated above, the Greek Ombudsman is a body with multiple mandates. To this end, the Ombudsman is assisted by a total of six sector-specific deputy ombudsmen. For the mandate of equal treatment, the Ombudsman is assisted by the Deputy Ombudsman on Equal Treatment. Each deputy ombudsman has a staff of scientific officers at their disposal, although there is no information on the number of scientific officers assigned to each deputy. As at 31 December 2018, the expert and administrative human resources of the Ombudsman¹⁹² amounted to 205 staff members, including the Ombudsman and the six Deputy Ombudsmen. The staff comprised 54 men (26.5 %) and 151 (73.6 %) women. The expert staff consisted of 135 senior investigators, and there were 63 administrative staff.

There are no available data for the human resources of the year 2019.

Following the adoption of Law 4443/2016, 10 people were hired (through secondments) especially for the Equal Treatment Department. There are no available data on the budget dedicated to the equality mandate.

The attention accorded to the equality/anti-discrimination mandate in the work of the Greek Ombudsman is satisfactory. Every year, the Ombudsman carries out a number of activities and projects for the promotion of equal treatment, such as training courses for police officers, visits to various places of employment and the preparation of materials to be disseminated. The Ombudsman includes a list of actions and activities in each annual report regarding the promotion of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation, etc. The fact that the Greek Ombudsman has assigned a deputy ombudsman for the purpose of carrying out its duties as an equality body is further proof of the priority given to that mandate.

The visibility level achieved for the Greek Ombudsman's equality mandate is also satisfactory. Every year the Greek Ombudsman includes a special report on its mandate as an equality body in its annual report. There is also a specific section on its website

¹⁹⁰ Law 4488/2017 on provisions for pensions in the public sector and various insurance provisions, on strengthening the protection of employees, on the rights of persons with disabilities and other provisions (*Νόμος 4488/2017 'Συνταξιοδοτικές ρυθμίσεις Δημοσίου και λοιπές ασφαλιστικές διατάξεις, ενίσχυση της προστασίας των εργαζομένων, δικαιώματα ατόμων με αναπηρίες και άλλες διατάξεις'*) (OJ A 137/13.9.2017).

¹⁹¹ The term 'monitoring framework' corresponds to that used by the UNCRPD itself in Article 33(2): 'States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention'. The same term is also used by the FRA in its *Fundamental Rights Report 2018* (available at: <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>), which, at pp. 232-233, refers to the Greek Ombudsman as the monitoring 'Framework' for the UNCRPD.

¹⁹² The data are available at: https://www.synigoros.gr/resources/annual-report-2018_web.pdf.

devoted to the issue of equal treatment, which is continuously updated with press releases and information on legislative or policy initiatives.

d) Status of the designated body/bodies – general independence

i) Status of the body

The Ombudsman is an independent authority, recognised by the 2001 Constitutional Revision (Article 103 of the Greek Constitution).

The annual budget of the Ombudsman changes each year¹⁹³ (see section 7b above for the latest budgets). For 2018, the budget was set at EUR 6 679 902 and for 2019 at EUR 6 851 341. The Ombudsman's funding comes from the Government.

The Office of the Ombudsman has the following staff as of 2018: one director (the Ombudsman, elected by a special parliamentary committee), six deputy ombudsmen, appointed by the Ministry of Interior pursuant to a proposal of the Ombudsman, 72 paid legally qualified staff members, 70 paid staff members with other qualifications and 30 other paid staff members. The Ombudsman and deputy ombudsmen are appointed for a non-renewable five-year term. The Ombudsman can be removed from office before the end of his/her term only due to reasons of health (physical or mental), following the issuing of a presidential decree proposed by the Ministerial Council, with the prior consent of a special parliamentary committee.

The Ombudsman has the authority to recruit its own staff.

The Ombudsman is not accountable before any governmental or administrative authority. The Ombudsman and deputy ombudsmen are not held accountable for, prosecuted for or examined on their opinions or on the actions that they carry out within the scope of their duties (Article 1 of Law 2477/1997, as amended).

ii) Independence of the body

The independence of the Greek Ombudsman is stipulated in Law 2477/1997 (Article 1(1)). In addition, according to Article 1(2), the Ombudsman is not subject to any governmental or administrative authority, which allows it to carry out its work freely without the fear of political or other consequences. The Ombudsman and deputy ombudsmen enjoy full personal and functional independence, which allows them to carry out their duties in an independent manner. This independence appears to exist in practice, since the Ombudsman's office constitutes a 'watchdog' for Government legislation and policies, often criticising and highlighting any issues which may give rise to the violation of citizen's rights or even *in proprio motu* issuing recommendations prompting the authorities to take action and address issues which have not been examined before or which are lacking regulation.

e) Grounds covered by the designated body/bodies

All grounds (i.e. racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics) in both the private and public sectors fall within the Ombudsman's jurisdiction. The Ombudsman's competence also covers the areas of children's rights, gender and Roma, and extends to all fields – it is not limited to occupation and employment. Furthermore, the Ombudsman deals with migrant issues and treats them as a priority.

¹⁹³ Budget information for the Greek Ombudsman is available at: www.synigoros.gr/?i=stp.el.stoixeia-proipologismou.

In order to better fulfil the above mandates, the Greek Ombudsman has designated a deputy ombudsman for each area which corresponds to a mandate. Each deputy ombudsman is in turn supported by technical staff with expertise in the area of their jurisdiction. There are no data on whether these technical staff under each deputy ombudsman cover all grounds or work on a ground-specific basis.

All grounds appear to receive equal attention in practice. Press releases show that the Ombudsman constantly works on all grounds and monitors the legislative work of Parliament by highlighting the grounds affected by any legislative initiatives. The issues of sexual orientation (including the promotion of the family-related rights of same-sex couples) and gender identity have been a recurring theme over the past few years, probably because legislative initiatives on these grounds were being publicly discussed and introduced.

Migrants are treated as a priority issue by the Greek Ombudsman and the Deputy Ombudsman for Human Rights. The annual report always contains a section on the Ombudsman's work concerning migrants and refugees. The Ombudsman frequently intervenes in cases of violation of migrant and refugee rights and has even published a separate report on the devastating conditions that refugees and migrants experience in accommodation camps,¹⁹⁴ as well as a further one on the return procedures¹⁹⁵ (pushbacks).

- f) Competences of the designated body/bodies – and their independent exercise
 - i) Independent assistance to victims

In Greece, the designated body has the competence to provide independent assistance to victims. It should be noted that this does not refer to traditional victim support. This 'assistance' means that the Ombudsman shall mediate between the victim and the violator by contacting the latter and urging it to rectify any wrongdoing (Article 3(6a) of Law 3094/2003, as amended).

The work of Ombudsman is undertaken independently. The Ombudsman is elected by a special parliamentary committee, in accordance with Article 101A (3) of the Constitution. Through a complaint system, the Ombudsman can mediate between the public administration/private employers and citizens.

The number of complaints to the Ombudsman remains high and continues to increase. According to the Ombudsman's *Annual Report 2019*, the number of complaints had risen significantly, by 9 %, in comparison to 2018. A total of 16 976 complaints were submitted in 2019.¹⁹⁶ According to the Ombudsman's *Annual Report 2018*,¹⁹⁷ the increase from 2017 was marginal (around 1 %) but, since 2015, the number of complaints grew by 36 %, from 11 502 in 2015 to 15 644 in 2018. Moreover, the available data for 2018¹⁹⁸ record the efficiency of the Ombudsman's mediation over time, which has now stabilised at an extremely high level, with 72 % of the admissible complaints being positively resolved for citizens. There are no data for 2019.

¹⁹⁴ Greek Ombudsman, *The challenges of migrant flows and the protection of refugees (Η πρόκληση των μεταναστευτικών ροών και της προστασίας των προσφύγων)*, April 2017, available in Greek at: <http://online.fliphtml5.com/hmpf/pczs/>.

¹⁹⁵ Greek Ombudsman, *Returns of foreigners (Επιστροφές Αλλοδαπών)*, Special Report 2016, available in Greek at: <http://online.fliphtml5.com/hmpf/ftuk/#p=8>.

¹⁹⁶ Greek Ombudsman (April 2020), *Annual Report 2019 (Ετήσια Έκθεση 2019)*, p. 27, available at: <https://www.synigoros.gr/resources/ee2019-p00-plires-keimeno.pdf>.

¹⁹⁷ Greek Ombudsman (March 2019), *Annual Report 2018 (Ετήσια Έκθεση 2018)*, p. 17, available at: <https://www.synigoros.gr/?i=stp.en.annualreporten.591293>.

¹⁹⁸ Greek Ombudsman (March 2019), *Annual Report 2018 (Ετήσια Έκθεση 2018)*, p. 24, available at: <https://www.synigoros.gr/?i=stp.en.annualreporten.591293>.

There are no data available regarding the staff and budget allocated for specific tasks (or grounds). Thus, it is difficult to assess the level and quality of resources. The Ombudsman has been able to maintain this level of intervention at a respectable level, especially when taking into account the budget cuts which began in 2010.

Law 4443/2016 did contain an article (Article 14b) which provided for 10 members to be added to the Greek Ombudsman's staff. However, no reference was made to the budget and to how it would be affected.

ii) Independent surveys and reports

In Greece, the designated body has the competence to conduct independent surveys and to publish independent reports.

The Ombudsman carries out its work of publishing reports and conducting surveys in an independent manner. It also publishes reports and surveys. The publishing of annual reports is mandatory under the Ombudsman's founding law (Law 2477/1997, as amended, Article 3).¹⁹⁹The Ombudsman may issue special reports or surveys on its own initiative on issues it deems important and necessary, which it often does in practice.

The Ombudsman has issued its annual reports without fail, submitting them to the Prime Minister and the President of Parliament in March every year; it has also published special reports, including on racist violence, immigration, returns of foreigners, gender and employment and environmental protection. All special reports are accessible and available on the official website.²⁰⁰ Apart from its reports, the Ombudsman has also published other important materials such as handbooks and guides aimed at promoting and providing information on human rights, discrimination and immigration. The quality of the reports and surveys it issues is very good. The Ombudsman constantly addresses new issues as they arise from the everyday lives of citizens.

The Ombudsman has been able to maintain this level of publications at a respectable level, especially when taking into account the budget cuts which began in 2010.

iii) Recommendations

In Greece, the designated body has the competence to issue independent recommendations on discrimination issues.

The Ombudsman issues recommendations in an independent manner. It publishes reports and surveys. The Ombudsman's reports and surveys include recommendations for the Government and the Administration. Moreover, the Ombudsman makes independent recommendations to the Administration regarding certain issues related to discrimination, either within the framework of the complaint system or separately.

The recommendations of the Ombudsman appear to play an important role in the legislative and policy process. For example, in cases of legislation affecting the promotion of equal treatment, the Ombudsman will often be invited by the relevant drafting committee to provide its recommendations, either in person or in writing. This was the case for the introduction of same-sex partnership agreements (adopted through Law 4356/2015) or the legal recognition of gender identity (adopted through Law 4491/2017). Moreover, the Ombudsman is often invited by municipal authorities to provide its opinion on certain measures that they are considering adopting.

¹⁹⁹ Specific data on discrimination issues have not been released by the Greek Ombudsman for 2019.

²⁰⁰ Special reports published by the Greek Ombudsman are available at:
<https://www.synigoros.gr/?i=stp.el.eidikesektheseis>.

There are no data available regarding the staff and budget allocated for specific tasks (or grounds). Thus, it is difficult to assess the level and quality of the available resources. The Ombudsman has been able to maintain interventions at a respectable level, especially when taking into account the budget cuts of the crisis years.

iv) Other competences

The Greek Ombudsman also has competence when it comes to raising awareness, promoting and supporting good practice and offering policy advice. To this end, it has held campaigns in collaboration with other agencies, has issued pamphlets and booklets related to discrimination issues and has mediated in discussions between local authorities and citizens (such as in the case of the Roma community). Finally, the Ombudsman is often invited by Parliament to present its views and comment on draft legislation. It often comments on current legislative initiatives through press releases and provides advice on the practical application of certain legislative measures.

g) Legal standing of the designated body/bodies

In Greece, the designated body does not have legal standing to:

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- bring discrimination complaints *ex officio* to court;
- intervene in legal cases concerning discrimination, for example as an *amicus curiae*.

The Ombudsman does not have the right of legal standing before the courts. The Ombudsman cannot even examine complaints related to cases pending examination before the courts (whether civil, administrative or criminal).

The Ombudsman cannot intervene in cases pending before the courts. During the examination of documents and other evidence at the disposal of the public authorities, the fact that they have been classified as secret may not be invoked, unless they concern issues of national defence, state security and the country's international relations.

All public services have an obligation to facilitate investigations in every possible way.²⁰¹ Finally, it should be mentioned that, according to Article 20 of Law 4443/2016 (which amends the Ombudsman's founding law), the Ombudsman has an obligation to refer any case which may include indications of the perpetration of a crime to the competent prosecutor. If the case involves the rights of a child, which calls for the intervention of judicial or other authorities, then the relevant file must be forwarded to them.

h) Quasi-judicial competences

In Greece, the Ombudsman (Article 14 of Equal Treatment Law 4443/2016) is not a quasi-judicial institution. It does not meet the criteria set by Greek case law, which state that quasi-judicial institutions should have procedures similar to judicial bodies, such as adversarial hearings and procedures for publishing decisions.²⁰² Similar criteria are also contained in CJEU case law.²⁰³

The opinions of the equality body are not legally binding, in that the respondent party is not compelled to comply with its findings. Even though the Greek Ombudsman is open to receive complaints from citizens, when it chooses to mediate it can only issue

²⁰¹ Article 4(5) of Law 3094/2003 on the Ombudsman.

²⁰² Such as Greek Council of State Decisions 137/2015, 99/2015 and 4399/2016.

²⁰³ See, for instance, Case C-331/05 P, *Internationaler Hilfsfondse V v. Commission of the European Communities*, Advocate General Trstenjak, 28.03.2007, paragraph 57, and Case C-509/11, *ÖBB-Personenverkehr AG*, Advocate General Jääskinen, 14.03.2011, paragraph 50.

recommendations and proposals to the public administration (and, since the adoption of Law 4443/2016, to private sector actors). The Ombudsman does not impose sanctions or annul illegal actions by the public administration and private sector actors. In practice, however, the Administration usually responds to the Ombudsman's interventions. In 2017, the Ombudsman's mediation in 20 % of the cases examined did not have a positive outcome, either because the Administration or the individual did not accept the Authority's proposals or for reasons relating to the applicable legislative framework or to organisational malfunctions in the relevant body.²⁰⁴

The Ombudsman has no authority to penalise or to prosecute discriminatory practices, only to activate governmental bodies to help eliminate the causes and practice of discrimination.

i) Registration by the body/bodies of complaints and decisions

In Greece, the body only registers the number of complaints of discrimination made, and the decisions.

These data are available to the public.

In Greece, the Ombudsman registers the number of complaints and decisions by ground, field, type of discrimination, etc. This information is included in its annual reports and is available to the public.²⁰⁵ The Ombudsman does not publish data on inquiries received.

The relevant legal provision is Article 3 of Law 2477/1997.

In April 2020, the Ombudsman published its *2019 Special Report on Equal Treatment*.²⁰⁶ In 2019 the Greek Ombudsman received 1 176 new complaints regarding equal treatment issues, 84 % of which fell within its competence and were thus further investigated. 898 complaints were successfully resolved during 2019 (404 cases were pending from previous years).

As for the distribution of the complaints examined in 2019 per ground of discrimination, 37 % concerned disability or chronic disease, 7 % concerned family status, 3 % concerned national or ethnic origin, 5 % concerned age, 2 % concerned race or colour, 1 % concerned religious or other beliefs, and 1 % concerned sexual orientation, gender identity or characteristics and social status. The remaining 44 % concerned discrimination on the ground of gender.

As for the distribution of complaints against public authorities (82 %), 38 % concerned social security funds and other organisations supervised by the Ministry of Labour, 24 % concerned the Ministry of Interior, 17 % concerned municipalities, 12 % involved the Ministry of Education, 6 % concerned hospitals and other legal entities supervised by the Ministry of Health, and 3 % concerned other public authorities.

As for the distribution of complaints against the private sector (18 %), 12 % concerned age, 11 % concerned disability or chronic disease, and 4 % concerned national or ethnic origin. The remaining 73 % concerned discrimination on the ground of gender.

²⁰⁴ Greek Ombudsman, *Annual Report 2017*, (Συνήγορος του Πολίτη, *Ετήσια Έκθεση 2017*), available in Greek at: <https://www.synigoros.gr/resources/ee2017-p00.pdf>.

²⁰⁵ The Ombudsman's reports are also available in English at: www.synigoros.gr/?i=stp.en.reports.

²⁰⁶ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (*Έκθεση Ίσης Μεταχείρισης 2019*), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

The Ombudsman published its general *Annual Report 2018*²⁰⁷ in March 2019, but it published its *2018 Special Report on Equal Treatment*²⁰⁸ only in August 2019. The special report describes the Ombudsman's actions for 2018 as a body responsible for promoting the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation, in compliance with its jurisdiction as established through Law 4443/2016.

According to the Ombudsman's *2019 Special Report on Equal Treatment*, 1 176 new complaints were submitted in 2019, revealing a 31 % increase in comparison to the number submitted in 2018.²⁰⁹

As for the distribution of the complaints examined in 2018 per ground of discrimination, 14 % concerned disability or chronic disease, 8 % concerned family status, 7 % concerned national or ethnic origin, 5 % concerned age, 3 % concerned race or colour, 3 % concerned religious or other beliefs, 1 % concerned sexual orientation, 1 % concerned gender identity or characteristics and 1 % concerned social status. The remaining 57 % concerned discrimination on the ground of gender.

Moreover, 70 % of the complaints concerned the public sector, whereas 30 % involved the private sector.

In particular:

- Of the complaints against public authorities, 45 % concerned the Ministry of Education, 20 % concerned municipalities, 18 % concerned social security funds and other organisations supervised by the Ministry of Labour, 8 % concerned hospitals and other legal entities supervised by the Ministry of Health, 8 % concerned the Ministry of Interior and 1 % concerned other public authorities.
- As for the distribution of complaints against the private sector per ground of discrimination, 7 % concerned age, 6 % concerned disability or chronic disease, 4 % concerned national or ethnic origin and 4 % other grounds. The remaining 76 % concerned discrimination on the ground of gender.

j) Stakeholder engagement

The designated body engages with stakeholders as part of implementing its mandate.

Under Law 4443/2016, the Greek Ombudsman has an obligation to engage with certain stakeholders when implementing its mandate on equal treatment. Article 19, which amends Article 3 of Law 3094/2003, states that the Ombudsman should cooperate with the General Secretariat for Human Rights of the Ministry of Justice, with the General Secretariat for Gender Equality of the Ministry of Interior, with the Ministry of Employment, Social Security and Social Solidarity and with social partners, businesses and NGOs, for the purpose of keeping them informed and promoting good practices on equal treatment. In practice, the Ombudsman appears to engage with the majority of these stakeholders by holding round-table events and meetings.

In an event held on 9 February 2016, the Ombudsman presented the *Guide on rights and benefits for vulnerable groups*, which was first issued at the end of 2015, as well as the dedicated website www.synigoros-solidarity.gr. Both the guide and the website were created in the context of the European Economic Area-funded Programme for Solidarity

²⁰⁷ Greek Ombudsman (March 2019), *Annual Report 2018* (Ετήσια Έκθεση 2018), available at: <https://www.synigoros.gr/?i=stp.en.annualreporten.591293>.

²⁰⁸ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2018), available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

²⁰⁹ Greek Ombudsman, *2019 Special Report on Equal Treatment*, available in Greek at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

and Social Inclusion in Greece (2009-2014). On 7 March 2016, the Ombudsman and the General Confederation of Greek Workers (GSEE) co-signed a cooperation agreement for the promotion and dissemination of the guide, with the assistance of regional and local trade unions. During the visit of the Ombudsman to the island of Lesbos on 27 January 2016, the Ombudsman organised a meeting for an exchange of views and the coordination of actions between the various agencies and groups working to protect unaccompanied and accompanied refugee and immigrant minors. The meeting was attended by 55 representatives from 26 governmental and non-governmental organisations and agencies. In 2018,²¹⁰ on-site visits were conducted in various regions of the country further to complaints in relation to the living conditions of Roma people and the rights of disabled persons for the purposes of verifying the actual living conditions or the objective access difficulties faced by disabled persons. There is no information for 2019.

k) Roma and Travellers

Since 2008,²¹¹ the Greek Ombudsman has witnessed the national dimensions of the Roma issue as well as the compelling need to immediately implement multiple targeted programmes of social integration and social support at a local and regional level. Such actions will prove successful only as long as they are mutually combined, coordinated and monitored by a national coordination centre. The reports that followed showed that the housing situation was due to the structural and systemic character of continuing discrimination against Roma in the area of housing and to the Ombudsman's choice to maintain active intervention throughout the course of these cases until they were dealt with conclusively. The Ombudsman supervises a constantly open pilot communication network with NGOs and other civil society institutions for the protection of Roma people. One of the main goals of this has been to disseminate and collect information on the urgent problems faced by these population groups, as well as to coordinate the activities undertaken by the participating agencies that are active in the protection of rights and the offering of social support to Roma living in Greece.

According to the Ombudsman's *2017 Special Report on Equal Treatment*,²¹² published in December 2018, the Roma's social exclusion and their living under conditions infringing upon the human rights of dignity and security remains a major problem, which requires coordinated intervention. In 2017, the Ombudsman also focused its interventions on housing restoration issues involving, bearing in mind that civic and municipal settlement and the 'conspicuousness' of this specific group of people constitute prerequisites of crucial importance when it comes to planning and implementing actions on housing and facilitating integration in economic, social and political life.

The existence of an 'unseen' number of people in our country, namely people who are essentially unrecorded in municipal records or population registers, or whose records are fragmentary or false, constitutes a perennial issue, mostly concerning our Roma fellow citizens. Eliminating this phenomenon of social marginalisation of Roma cannot be managed if provisional or facilitating settlements are not reached at municipal level. Civic 'obscurity' undermines equal participation in economic, social and political life and hampers any efforts or actions aimed at confronting this extremely acute social issue. Besides the fact that the processing of any transaction is hampered due to an inability to issue official identity cards (allowing access to social programmes, the issuing of a tax record number, a social security number, etc.), the problem is perpetuated from the start, as those individuals who are not registered on the population register cannot proceed to make other necessary registrations.

²¹⁰ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2018), p. 77, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

²¹¹ Greek Ombudsman (2007), *Promoting equal treatment - the Greek Ombudsman as national equality body*, available at: www.synigoros.gr/resources/docs/8294_1_ish_metax_engl_teliko_swsto2007.pdf.

²¹² Greek Ombudsman, *2017 Annual Report*, (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2017), p. 42, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

According to the Ombudsman's *Equal Treatment Report 2019*,²¹³ the main issues considered by the Ombudsman during that year concerned the social tension created between Roma and non-Roma locals and the obstacles that arose for Roma in exercising their rights regarding the presentation of a certificate of permanent residence.

One issue of major importance is the social tension caused by the coexistence of persons belonging to different groups of the country's population, with drastically different living and cultural habits. In 2019, the Ombudsman received reports from residents living near Roma settlement camps, protesting against the deterioration of their quality of life. These reports focus in particular on: (a) problems arising from the livelihood or other activities of the Roma (e.g. burning tyres and cables, dangerous driving, pollution, accumulation of scrap material) and (b) the absence of the competent authorities or the improper exercise of their responsibilities (indicatively, cases 234898, 235969, 249569, 250947, 253769, 266323, 267431).

When investigating such cases, the Ombudsman uses or requests information from municipalities regarding the type of Roma settlement, the number of families staying there and their typical patterns of living, seeking immediate action by the competent authorities and responses to its specific proposals.

According to the Ombudsman, in addition to the ability to develop business plans and to request material and technical assistance from the central administration in order to implement appropriate housing plans, municipal authorities must activate their social services and take immediate action. In this context, actions to promote the participation of all residents of the area, regardless of origin, can be extremely useful. This can include, for example, cleaning activities, vaccinations, ceremonial celebrations, entertainment events for young people in the municipality, and information and awareness-raising activities regarding the obligation to keep public and private spaces clean and to avoid causing noise. Such initiatives allow for mutual understanding and encourage the development of respectful relationships between residents.

Regular health checks should be carried out at a regional level, and regional authorities should provide municipalities with assistance in implementing business projects to improve living conditions. After all, ensuring and improving decent living conditions contributes significantly to the peaceful coexistence of all the inhabitants of each region. Similar mediation and information activities can be undertaken by the local police authority in cooperation with the municipality, with the aim of consolidating and enforcing good neighbourhood rules.

²¹³ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Της Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Article 13 of Equal Treatment Law 4443/2016 enshrines Articles 11 and 12 of Directive 43/2000 and Articles 13 and 14 of Directive 78/2000 relating to social dialogue. Article 17 enshrines Article 10 of Directive 43/2000 and Article 12 of Directive 78/2000 concerning the dissemination of information.

The most important body which provides information about legal protection against discrimination is the Ombudsman. It is an independent body, which provides legal aid, assistance and general advice to people who consider that they have been victims of infringements of the law and discriminatory practices. The Ombudsman maintains close cooperation with civil society organisations and other competent bodies in order to exchange know-how and experience in the field of protecting the rights of vulnerable population groups. In this context, it actively participates in educational programmes, workshops and events organised at its own initiative or by the various bodies that engage in these issues. The Labour Inspectorate also plays a distinctive role in the dissemination of information.

According to its *2019 Special Report on Equal Treatment*,²¹⁴ the Ombudsman has consistently sought to cooperate with civil society organisations and other stakeholders and services in order to exchange information and experience in the fight against discrimination. Although it does not have a special budget for promoting the principle of equal treatment and for systematically planning and monitoring the results of its actions, the Ombudsman actively participates in educational programmes, conferences, workshops and events aimed at disseminating information and raising awareness about the implementation and promotion of the principle of equal treatment. In this context, the Ombudsman's training activities at the National School of Public Administration and the Hellenic Police Academies continued during 2019, in addition to systematic cooperation with labour inspectorates throughout Greece.

The Ombudsman was represented at various meetings, including parliamentary meetings, on issues related to the social integration of migrants (15 March 2019) and domestic violence (3 December 2019), as well as issues around the protection of disabled people, always emphasising the need for a special focus on substantially safeguarding equal access to rights and services by vulnerable groups.

Distribution of materials and promotion of awareness raising by the Ombudsman

- During 2017, in order to inform and raise awareness of citizens as far as discrimination issues were concerned, but also to facilitate the work of civil society organisations taking action with regard to individuals and groups with protected characteristics, the Ombudsman published two information leaflets²¹⁵ about the protection provided under the framework of Laws 3896/2010 and 4443/2016, entitled 'The Ombudsman for equal treatment', in three different languages (Greek, English and Arabic), and 'The Ombudsman for equal treatment in the field of labour'. In addition, in order to familiarise students with the existing legal framework for equal treatment, the Ombudsman carried out visits to schools to inform and raise

²¹⁴ Greek Ombudsman (April 2020), *Equal Treatment Report 2019* (Έκθεση Της Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

²¹⁵ Greek Ombudsman, *Annual Report 2017* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2017), p. 122, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

awareness among students and teachers on combating discrimination and promoting the principle of equal treatment.

- On 14 May 2018, the Greek Ombudsman used a press release to publish new informative material concerning the dissemination of the legal framework that protects equal treatment.

Specifically: 1) The Ombudsman updated the existing special guide entitled 'Respect makes the difference',²¹⁶ which is addressed to public employees. The guide aims to help public administration employees by fully informing them about the provisions of Equal Treatment Law 4443/2016, allowing them to meet the needs of various groups of citizens who potentially have special features. The various sections of the guide refer to grounds of racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics. The material relates strictly to the Ombudsman's experience in problems and cases that have preoccupied its employees. The contribution of NGOs and civil society was important in this regard.

2) The Ombudsman issued two informative pamphlets²¹⁷ about its competence on equal treatment under the title of 'How we can help you'. The new printed material explains in an intuitive and comprehensible way what discrimination is, what the Ombudsman as an equality body can do and what steps a citizen should follow in order to find a solution to a case concerning discrimination. The pamphlets, which meet the international standards of accessibility for disabled persons, have been circulated in three languages (Greek, English and Arabic), and have been distributed to the offices of the Ombudsman and other organisations cooperating with it (such as the Labour Inspectorate Body and NGOs).

According to the Ombudsman's *2018 Special Report on Equal Treatment*²¹⁸ (covering 2018, published in August 2019), the Ombudsman's training activities continued in 2018, with training on issues of rights and equal treatment provided to Government officials,, the National School of Public Administration and the Hellenic Police Academies. Moreover, the Deputy Ombudsman for Equal Treatment and the Ombudsman's officials were invited to several parliamentary committee meetings to express the National Body's points of view on matters relating to equal treatment and the improvement of the wider legal framework. Specifically, the Deputy Ombudsman for Equal Treatment and the National Body's officials presented the Ombudsman's points of view as the national body for promoting the principle of equal treatment. For instance, on 6 December 2018, they participated at a meeting of the Parliament's Subcommittee for People with Disabilities on the topic of 'Special Education – School dropouts'.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)
- Article 15(2) of Equal Treatment Law 4443/2016 entrusts the Economic and Social Council²¹⁹ with, *inter alia*, encouraging dialogue with NGOs and representative unions which have a legitimate interest in combating discrimination on the grounds of ethnic or racial origin, religion or beliefs, sexual orientation and disability. However, there is no example of any such initiative on the part of the Economic and Social Council.

²¹⁶ See https://www.synigoros.gr/resources/im_odigos_web_o_sevasmos_kanei_ti_diafora_gr.pdf.

²¹⁷ See <https://www.synigoros.gr/?i=equality.el.ifleaflet#isotita-fylladia-im>.

²¹⁸ Greek Ombudsman, *2018 Special Report on Equal Treatment* (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2018), p. 76, available in Greek at: <https://www.synigoros.gr/?i=equality.en.recentinterentions.588550>.

²¹⁹ Greek Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientation of economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2322/1994, which was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences.

- The Racist Violence Recording Network (RVRN) was set up in October 2011 on the initiative of the NCHR and the UNHCR in Greece.²²⁰ This initiative is supported by non-governmental organisations and bodies such as Amnesty International, Aitima, the Babel Day Centre, Doctors of the World, the Ecumenical Refugee Programme, the Greek Council for Refugees, the Greek Forum of Refugees, the Greek Helsinki Monitor, the Group of Lawyers for the Rights of Refugees and Migrants, the Hellenic League for Human Rights, METAdrasi and PRAKSIS. In 117 victim interviews conducted from January to December 2018, the RVRN documented 117 incidents of racist violence involving more than 130 victims.²²¹ Of these incidents, 67 involved migrants and refugees who had been targeted due to their foreign origin (60 persons), due to their ethnic origin (one Roma person) or due to their colour (six Greek citizens). Six other cases involved defenders of human rights, members of associations of migrants and a monument dedicated to deceased refugees. Twenty-seven cases involved LGBTQI persons (four of whom were refugees and asylum seekers, one being an EU citizen). Symbolic or Jewish religious sites were involved in nine of the incidents, while a Greek citizen was targeted due to educational activity against anti-Semitism. Most of the information regarding attacks against refugees and migrants was provided by the Greek Forum of Migrants, which is a federation of 35 associations of migrants in Greece, whereas most of the information about attacks against LGBT people came from the NGO Colour Youth – Community of LGBTQ Youth of Athens. The data concerning the year 2019 are expected to be released at the end of March 2020.
- In December 2013, the Greek Ombudsman established an open communication anti-discrimination network, consisting of civil society organisations. The network represents an attempt to establish an unofficial partnership between the various stakeholders in order to share information and knowledge and to work collectively for the promotion of equality and to provide overall support for these groups. Following the success of pilot communications and the coordination of specific smaller networks which were set up in the past among regional civil society organisations working with Roma and involved in migrant protection and support, the Ombudsman used its very positive experience to establish similar networks in 2013 for each ground of discrimination, unifying them under the umbrella of a single, multi-thematic network. This network aims to raise greater awareness of the role the Ombudsman can play in safeguarding equal treatment and to familiarise participating bodies and organisations with the existing institutional tools and legislation for combating discrimination.
- The Ombudsman is a regular participant at congresses and workshops organised by competent bodies on issues relating to equal treatment and the fight against discrimination by public bodies. The Deputy Ombudsman for Equal Treatment and the National Body's officials frequently make recommendations or interventions, focusing on the Ombudsman's role as a national body for promoting equal treatment. On 5 December 2018, for example, the Ombudsman was represented at an international conference organised by the National Centre for Social Research under the title 'The fight against multiple discrimination in Greece: Promotion of equality through active participation and policy making', and made a presentation entitled 'Institutional interventions to encounter multiple discrimination'.
- According to its *2019 Special Report on Equal Treatment*,²²² the Ombudsman maintains a high level of interest in the developments that are taking place at a

²²⁰ The Racist Violence Recording website is available at: www.rvrn.org.

²²¹ According to data given to the author and legal expert Athanasios Theodoridis on 01.03.2019 after a special request he made on behalf of ANTIGONE – the Information and Documentation Centre on Racism – which is a member of the Racist Violence Recording Network.

²²² Greek Ombudsman (April 2020), *Equal Treatment Report 2019*, (Έκθεση Ίσης Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

European level concerning the implementation and promotion of the principle of equal treatment. The Deputy Ombudsman for Equal Treatment completed her term in October 2019, having spent eight years on the board of the European Network of Equality Bodies (EQUINET).

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

With the goal of further educating and raising awareness among the executives of public bodies and services on equal treatment issues, the Ombudsman, supported by the Embassy of the Netherlands, ensured the publication of equal treatment guidelines entitled 'Respect makes the difference', in both hard and electronic versions.²²³ This textbook, which provides an update of equivalent guidelines published in 2014, is addressed to bodies and services in the public administration. It aims to assist public sector executives in understanding the special features of people who fall under specific protection, in order to create a common understanding and to help the Administration in addressing issues of discrimination and prejudice which they might encounter.

In 2018 the Ombudsman ran numerous workshops with representatives from public bodies and authorities directly involved in matters related to the fight against discrimination. A particular emphasis was placed on strengthening cooperation between the Ombudsman and the Labour Inspectorate (SEPE). To this end, the Deputy Ombudsman for Equal Treatment and the Ombudsman's officials visited the Labour Inspectorate's offices at various locations throughout Greece.²²⁴

- d) Addressing the situation of Roma and Travellers

Law 2667/1998 entrusted the National Commission for Human Rights with encouraging dialogue about human rights with NGOs, representatives of Government ministries, representative unions and communities such as the Roma community, which also has a seat on the National Commission.

In December 2016 it was announced that a Special Secretariat for the Integration of Roma was to be established under the Ministry of Employment, Social Security and Social Solidarity. In 2017 Aikaterini Giantsiou was appointed Special Secretary for the Integration of Roma. The Special Secretariat was abolished in July 2019, however, and its competences were transferred to the General Secretariat of Social Solidarity.

On 7 December 2018, during the General Assembly of a Panhellenic Confederation of Greek Roma, the Vice Minister of Social Solidarity announced measures favouring the social inclusion of Roma. The measures concerned the creation of multi-centres for Roma communities all over Greece, the interdiction of marriages of underage persons and the setting up of a telephone communication centre serving Roma. The budget of these multi-centres amounts to EUR 11 million and covers health services, additional educational activities for children and laundry facilities.

In its *Equal Treatment Report 2019*,²²⁵ the Ombudsman identifies the actions of the Municipality of Halandri in Athens as good practice. For at least six years, the municipality has been actively involved in relocation, employment and urban planning for the relatively small group of Roma living in informal settlements within the municipality. It took five years of intensive efforts to eventually relocate about a quarter of the population to homes

²²³ Greek Ombudsman, *Annual Report 2017*, (Συνήγορος του Πολίτη, Ετήσια Έκθεση 2017), p. 124, available in Greek at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>.

²²⁴ These visits were conducted as part of the Ombudsman's tour of the country's regions.

²²⁵ Greek Ombudsman (April 2020), *Equal Treatment Report 2019*, (Έκθεση Ίσης Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

and to integrate some Roma families into the formal labour market (see cases 193004 and 228363).

The report adds that the relocation of existing settlements that do not meet the requirements of decent living is a key issue, as it is directly linked to a number of other rights (education, employment, health, etc.) and alleviates social exclusion. The Ombudsman has repeatedly stated that: 'The departure of [the Roma] from their place of residence presupposes actions on the part of the relevant authorities in order to indicate a specific area of relocation and the legality of their stay, which meets at least the basic conditions of dignity and security.' For many years, the reluctance of municipalities to indicate specific areas for relocation or to create a framework of minimal benefits for relocation to another area has created a situation where there are: (a) frequent re-occupation of empty spaces and camps being set up in areas belonging to individuals or the state, (b) limited presence or complete absence of the police, in terms of both preventive action and suppression, and (c) refusal of the local authorities to deal with or manage the issues that arise in relation to non-standard housing.

Finally, the Ombudsman highlights the absolutely crucial role of local and regional authorities. In addition to long-term interventions in the development of action plans and strategies, it is necessary to implement short-term targeted actions, for which the cost is not prohibitive. Typical examples of such interventions, as reported by the Ombudsman, are the installation of more refuse bins, the construction of pavements and minor roads, assistance for obtaining drivers' licences and other similar 'low intensity' interventions that do not need special funding, structuring or programming.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

According to Article 12 of Law 4443/2016, legislative, regulatory and administrative orders or acts, policies and actions within the fields covered by Part A of the law shall always take into account the principle of equal treatment. This means that, during the preparation of these legal texts, the drafters will take into account the principle of equal treatment. If the principle of equal treatment is not respected, these laws shall not be implemented or, if they are, they can be challenged before the Council of State.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

According to Article 23 of Law 4443/2016, from the entry into force of its provisions, all terms contained in individual contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations which are contrary to the principle of equal treatment as enshrined in Part A of the law shall be declared null and void.

9 COORDINATION AT NATIONAL LEVEL

Articles 15 and 16 of Equal Treatment Law 4443/2016 regulate the coordination of anti-discrimination issues on a national level.

As regards services for the monitoring and promotion of equal treatment, the General Secretariat for Transparency and Human Rights of the Ministry of Justice, within the framework of its jurisdiction on the protection of human rights and the combating of all forms of discrimination, is to provide for the promotion of equal treatment. Monitoring and promotion of equal treatment has yet to be carried out by the aforementioned body and there is no available information regarding this. The Social Protection Directorate of the Ministry of Labour should, *inter alia*, monitor the application of anti-discrimination policies in the field of labour and employment, inform employees and employers on issues related to discrimination in the field of employment and raise awareness, as well as providing scientific support to the Labour Inspectorate Body.

Information regarding a National Action Plan on anti-racism or anti-discrimination

In December 2013, the General Secretariat of Transparency and Human Rights of the Ministry of Justice presented a National Action Plan on Human Rights, which had been prepared with the assistance of experts from all the relevant ministries and agencies.²²⁶ The Action Plan, which is still valid, sets out a binding framework of priorities and actions for each ministry and provides everyone with opportunities for comments, improvements and criticism in order to ensure continual improvements. The plan also meets the requirements of international organisations. With the production of the National Action Plan on Human Rights, Greece has finally presented a specific schedule of activities and initiatives for the protection of human rights. The relevant Government officials have set out more specific commitments and priorities for the implementation of the programme. Citizens can gain a full picture of the actions that are being or are to be carried out; they can review the actions and any omissions, and can express their opinions and suggestions for improvement.

The National Action Plan is mentioned here because it also includes a list of pending policies for combating racial discrimination:²²⁷ the revision of the institutional framework for granting citizenship; simplifying the legislative framework for immigration; drafting a new National Plan for the Integration of Immigrants; action to ensure the proper functioning of the Departments and Bureaus against Racial Violence; systematic recording and processing of racial violence; updating and issuing circulars to deal with racist incidents; creating channels of cooperation between the Greek police and other agencies, with special education programmes for managerial staff on racial matters; and organising educational seminars for judges and prosecutors. However, the provisions of this general National Action Plan have been criticised as being abstract.

There is no anti-racism or anti-discrimination national action plan per se. However, the Economic and Social Council (OKE),²²⁸ which is an advisory body based on a tripartite organisational model, draws up an annual report on developments regarding the implementation of Equal Treatment Law 4443/2016 (Article 13(2)) within the framework of its mandate to conduct social dialogue on social policy issues, with special emphasis on the workplace. In addition, OKE submits proposals to the Government and social partners on the promotion of the principle of equal treatment and the adoption of anti-discriminatory measures; encourages dialogue with representative organisations, including relevant NGOs; and seeks to raise awareness and disseminate information on the applicable legislation and the measures taken.

²²⁶ The National Action Plan on Human Rights.

²²⁷ The National Action Plan on Human Rights, pp. 167-178.

²²⁸ The official website of OKE is available in English at: <http://www.oke.gr/en>.

National Council against Racism and Intolerance

Article 15 of Law 4356/2015 established a National Council against Racism and Intolerance as an advisory body to improve the consultation process and cooperation amongst stakeholders, as well as improving services for preventing and combating racism and intolerance. Article 17 states that the National Council is responsible for the harmonisation of national law and policies with international and European regulations and practice, and for the development of initiatives throughout the whole public sector in order to achieve the most effective protection of people and groups who are targeted because of their race, colour, national or ethnic origin, descent, social origin, religious or other beliefs, sexual orientation, gender identity or disability. A further National Action Plan is still awaiting adoption and is set to be implemented based on clear qualitative and quantitative indicators, which will progress through the following stages: a) prioritisation of goals and cost; b) observation and update; and c) evaluation, in order to ensure the coordinated combating of racism and intolerance by the state.

Only one meeting of the National Council took place in 2016.

During 2017 and 2018, the Council mainly issued press releases against racism during anniversaries such as the International Day of Human Rights and the International Day of the Migrant.

On 5 February 2019 the National Council Against Racism and Intolerance issued a leaflet²²⁹ to raise the awareness of public officials against racist crime, with the aim of informing them and intensifying their actions in order to deal more effectively with incidents of racist violence and hate speech.

During 2019 a TV spot by the National Council concerning the integration of refugee children in public education was broadcast at national level by public and private TV channels, having been categorised by the National Council for Radio and Television as a 'social message'.

On 20 June 2019 a TV spot by the National Council regarding World Refugee Day was also broadcast under the above procedure.

Finally, in July 2019, upon completion of its first term, the National Council Against Racism and Intolerance decided to launch a National Action Plan against Racism, setting clear goals and actions. The action plan has not yet been published, however, and there are no details available. However, the National Council has adopted specific objectives to raise awareness of the fight against racism and regarding education, the integration of target groups and access to justice for victims.

There were no other developments concerning coordination during 2019.

²²⁹ The leaflet is available in Greek at: https://www.ministryofjustice.gr/?page_id=3368.

10 CURRENT BEST PRACTICES

The implementation of the Greek National Strategy for the Social Integration of Roma 2012-2020 continued during 2019, focusing on the following objectives: a systematic and comprehensive inventory and description of the current situation; a review of the rationale behind the planning priorities, based on the results of the aforesaid inventory; a redefinition of priorities in the short, medium and long term, based on the existing needs of the target group and the available resources (human and financial); and the establishment of an administrative mechanism for the integrated management of the National Strategy. The primary objective of the National Strategy is to end the social exclusion of the Roma and to create the necessary conditions for the social integration of Roma people, whether they are Greek or foreign nationals residing lawfully in Greece. This strategic objective is to be served through the guaranteed provision of housing, in such a way that the needs of the Roma target group for acceptable living conditions can be met. This objective was implemented on a short-term basis (2012-2016) and is now being further implemented on a medium-term (2016-2020) and long-term (2020 onwards) basis.

In 2018, the Ministry inaugurated the multi-centres (*Πολυκέντρα*). These centres, located close to Roma schools and settlements, include facilities and services dealing with personal and environmental hygiene. In conjunction with the Roma Annexes – introduced in previous years as special divisions in the municipalities – the multi-centre provides holistic services, especially to Roma children, so that they can integrate smoothly into the education system.

Furthermore, from 2016 until 2019, more and more municipalities have been establishing Roma Annexes to their community centres.²³⁰

The Roma Annexes aim to provide specialised services related to the particular problems faced by the Roma with the aim of improving their living standards, ensuring their full social integration, securing the support of students and helping to combat school drop-out. They also provide the following services:

- reception – information, mediation, referral of beneficiaries to the relevant welfare programmes, facilities and services;
- support, empowerment and motivation of women;
- counselling and social support;
- promoting education, enhancing the integration of children and adults in the field of education.

The Roma Annexes were integrated into the European Social Fund's thematic objective 9 (promoting social inclusion, combating poverty and any discrimination) – as included in the regional operational programmes (*Περιφερειακές Στρατηγικές Κοινωνικής Ένταξης των Ρομά*).²³¹ According to these regional operational programmes, the Annexes also include counselling and legal advice on issues of discrimination.

Roma Annexes operate in nine municipalities in Attica Region,²³² and a total of 254 centres were originally announced to operate in municipalities throughout the country.²³³

²³⁰ Ministry of Employment, Social Security and Social Solidarity (May 2018), Guide for the Application and Functioning of Community Centres, Athens, available in Greek at: http://www.mou.gr/elibrary/Guide_KentraKoinothtas2016.pdf.

²³¹ The Greek Special Secretariat for the Social Inclusion of Roma has published the regional operational programmes on its official website in Greek at: <https://kekpa.gr/el/synolo-praksis-kentron-koinotitas/2903-ethniko-epixeirisiako-sxedio-drasis-gia-tin-koinoniki-entaksi-ton-roma-2017-2021>.

²³² The Roma Annexes Operating in Attica Region are presented in Greek at: <http://www.socialattica.gr/eidi-domis/kentro-koinotitas-me-parartima-roma>.

²³³ CNN Greece, ASEF: 'A total of 1,450 appointments at community centres', 19 January 2018, available in Greek at: <https://www.cnn.gr/news/ellada/story/63494/asef-synolika-1-450-proslipseis-se-kentra-koinotitas>.

In July 2019 the Special Secretariat for the Integration of Roma was abolished in the context of several major changes in the overall structure of government. However, its competences were transferred to the General Secretariat of Social Solidarity, and the pre-existing projects are still being run.

Under the National Strategy for the Social Integration of Roma, a new National Strategic Reference Framework (NSRF) action,²³⁴ launched on 3 June 2019, allocated EUR 540 000 for rent, household expenses and utility bills for Roma living on the islands of Rhodes and Kos. The aim is to provide housing in the context of providing housing support services for decent living and relocating specific marginalised social groups such as the Roma to autonomous housing solutions, while at the same time providing social services to promote employment and social inclusion in general, and integration in the urban fabric. The following categories of direct costs were eligible: (a) rental expenses: monthly rental of property proportional to the number of family members up to EUR 5.50 per square meter; and (b) utility expenditure: monthly household expenditure on utility bills (water, energy, municipal charges and taxes) and shared living expenses proportional to the number of family members, up to EUR 120 per month for up to two persons and up to EUR 160 per month for three or more persons. There is no data on how many Roma benefited from these measures.

In its *Equal Treatment Report 2019*,²³⁵ the Ombudsman identifies the actions of the Municipality of Halandri in Athens as an example of good practice. For at least six years, the municipality has been actively involved in relocation, employment and urban planning for the relatively small group of Roma living in informal settlements within the municipality. It took five years of intensive efforts to relocate about a quarter of the population to homes and to integrate some Roma families into the formal labour market (indicatively, cases 193004, 228363).

It is important to highlight the organisation called Police Action for Human Rights,²³⁶ which was established in 2018.²³⁷ It includes two specific sections with specific actions: a) the LGBT Police Action department for the rights of LGBT Police Officers; and b) the Department of Women's Rights for female police officers. According to its founding act, the fundamental principles and goals of the organisation are:

1. To defend Human Rights, abolish discrimination, ensure respect for the principle of equal treatment and combat racism.
2. Promote and support Equality and Equal Treatment of Police officers, regardless of gender, race, ethnic origin, religion, state of health, age, family or social status, sexual orientation, gender identity, gender characteristics, and the abolition of all Discrimination on the basis of the above grounds, in accordance with the principles enshrined in the Greek Constitution, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. (...)
4. The development of solidarity between police and homosexuals, bisexuals, intersexual and transsexuals.
5. The interconnection of relevant domestic actions with those international and European actions as well as with other non-governmental domestic organisations with activities in support of Human Rights.
6. The participation of the Organisation as a member of pan-European or international organisations with related purposes.

²³⁴ Information available at the official website of NSRF at:

<https://www.espa.gr/el/pages/ProclamationsFS.aspx?item=4366>.

²³⁵ Greek Ombudsman (April 2020), *Equal Treatment Report 2019*, (Έκθεση Έτος Μεταχείρισης 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

²³⁶ Police Action for Human Rights identifies as a non-governmental organisation. For its official Facebook page, see: https://www.facebook.com/pg/PoliceActionForHumanRights/about/?ref=page_internal.

²³⁷ Proto Thema (Πρώτο Θέμα) (31.05.2018), 'The first Greek Union for the rights of LGBTQI police officers is established', (Ιδρύθηκε το πρώτο ελληνικό σωματείο για τα δικαιώματα των ΛΟΑΤΚΙ αστυνομικών), available in Greek at: <https://www.protothema.gr/greece/article/792353/idruthike-to-proto-elliniko-somateio-gia-ta-dikaionomata-ton-loatki-astunomikon/>.

There have been no developments concerning other best practices on the above issues during 2019.

239 For more information, see the relevant post of 21.05.2018 on the organisation's social media page,
available in Greek at:
[https://www.facebook.com/PoliceActionForHumanRights/?hc_ref=ARSg34002akiw_3O2FscwX9LV1uhTGezIX_-qCHWuGU1tfhlpz2EJQJ0gaUw0V4JZTWk&xts__\[0\]=68.ARBAlyPlpyYKaI6a4onI6XRXC2URqwnF8E3zyqreV9iBpj1nwAH2k_eVNZciKEpej8fyCyrhXRDltafrs1_55FfLyMvHJIOh_nfnqptdvTyRM1R-6il-4VLfSS6qX1RrmjO5ywHmoQ63RdkiJuoHwQkL328m8MuFYHfymscADCC3CimsgqHdTher2u-3r1HRq6Cb2kufkaPAMZjiIULRwrhuj9TMDlpXM90FoigQVHnZJGRBIsOqDhwE_zZa2Nd4uclZHiWbA8aMmAv1C5w6dy0qyH3iRBjhLWNBOxDHs-ZEHjmBiu3AkEhZ6b_Brly0W4DejnfSWgtLTbxCIvUxc_Fl&tn__=kC-R](https://www.facebook.com/PoliceActionForHumanRights/?hc_ref=ARSg34002akiw_3O2FscwX9LV1uhTGezIX_-qCHWuGU1tfhlpz2EJQJ0gaUw0V4JZTWk&xts__[0]=68.ARBAlyPlpyYKaI6a4onI6XRXC2URqwnF8E3zyqreV9iBpj1nwAH2k_eVNZciKEpej8fyCyrhXRDltafrs1_55FfLyMvHJIOh_nfnqptdvTyRM1R-6il-4VLfSS6qX1RrmjO5ywHmoQ63RdkiJuoHwQkL328m8MuFYHfymscADCC3CimsgqHdTher2u-3r1HRq6Cb2kufkaPAMZjiIULRwrhuj9TMDlpXM90FoigQVHnZJGRBIsOqDhwE_zZa2Nd4uclZHiWbA8aMmAv1C5w6dy0qyH3iRBjhLWNBOxDHs-ZEHjmBiu3AkEhZ6b_Brly0W4DejnfSWgtLTbxCIvUxc_Fl&tn__=kC-R)

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

Greece belongs to the majority of EU Member States which, prior to the adoption of the two directives, did not have a special legislative framework establishing equal treatment and prohibiting discrimination. There do not appear to have been any breaches, although judicial interpretation is needed in relation to exceptions for employers with an ethos based on religion (Article 4(3) Law 4443/2016 and Article 4(2) of Directive 2000/78). Given that Law 4443/2016 was introduced prior to the CJEU decisions in *Egenberger* and *IR v. JC*, the law is vague and needs to be clarified and brought into line with the findings in these cases.

Secondly, the sanctions as foreseen by Greek law cannot be considered to be effective, dissuasive and proportionate, and are therefore in violation of the directives. As highlighted by the Greek National Commission for Human Rights (GNCHR) in its observations on Law 4443/2016, in order for Article 11 of Law 4443/2016 (corresponding to Article 15 Directive 2000/43 and Article 17 Directive 2000/78) to be effective in cases of discrimination perpetrated by public servants and workers for legal persons under public law, the relevant provisions of the Code of Public Servants (namely Article 107(1) of Law 3528/2007) must extend the scope of disciplinary sanctions in order to cover violations of the principle of equal treatment.

Thirdly, as highlighted by the GNCHR in its observations on Law 4443/2016, the relevant articles of the Code of Administrative Procedure before the Administrative Courts as well as the legislation on the court procedure before the Greek Council of State have to be amended in order to include a shift in the burden of proof for equal treatment violations.²⁴⁰ As they stand, these legal texts maintain that the burden of proof is on the side of the applicant. If these provisions are not amended, judicial interpretation will be needed. This means that the applicant will have to invoke the relevant article of Law 4443/2016 during the written proceedings, reminding the judge that the burden of proof is shifted to the respondent. The judge may not be aware of the exception and might apply the general rule of burden of proof in administrative cases.

11.2 Other issues of concern

Before proceeding to the issue of implementation, it is first important to highlight the lack of case law, which is a permanent problem in the Greek legal order, since victims are not usually informed about their rights and civil society is weak compared with other Member States. With regard to barriers to justice, on 30 January 2011, in accordance with Ministerial Decision KYA 123827//23-12-2010, the fee which must be paid to the police in order to register a criminal complaint was increased by 900 % (EUR 100 instead of EUR 10), which seems to constitute a deterrent to seeking redress. Moreover, there are no detailed statistics on the cases that reach the courts, since each court has to compile its own data, without standardised criteria. Dealing with this issue is crucial for evaluating the practical implementation of Law 4443/2016.

Identified issues regarding the text of Law 4443/2016

- The law has not been amended in order to improve the protection framework (sanctions, damages and procedural aspects) – with the exception of some very limited cases – and under no circumstances does it promote the consistency of the various fields of protection. What is more, discrepancies in the Civil Code need to be

²⁴⁰ GNCHR, Observations on the Draft Law of the Ministry of Justice, Transparency, and Human Rights, 'Application of the principle of equal treatment irrespective of race, colour, ethnicity or ethnic origin, creed, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics, and other provisions', September 2016, available in Greek at: http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_SxN_Isi_Metaxeirisi_2016.pdf.

addressed, especially concerning the lack of provisions which link non-discrimination law to actions for damages.

- There is concern about the application of the principle of equal treatment in Greece, even more so since the economic crisis. Many measures adopted during this period in relation to labour and social security are still in force to this day and are age-related. For example, the minimum age for retirement was extended by a couple of years. These measures can lead to unfavourable treatment based solely on age, since, in practice, younger generations may not have access to employment (given that positions will still be occupied by older persons), and they may constitute direct, non-justifiable discrimination in violation of Directive 2000/78/EC.²⁴¹

Identified issues related to the equality body

- The most important issue related to the equality body seems to be related to its budget and resources (personnel and facilities). The Greek Ombudsman has multiple mandates, which leads to an increased caseload (specifically, an increase in the number of cases to be examined). In order for the body to function more effectively, these issues have to be addressed.

Recommended steps for effective implementation of anti-discrimination measures

The key issues for Greece in the anti-discrimination field can be summarised as follows:

- 1 The Codes of Procedure should be amended in order to provide for the *locus standi* of the Ombudsman as a third party before civil or administrative courts or as a civil party before the criminal courts.
- 2 Extension of the *ratione temporis* 'jurisdiction' of the Ombudsman over cases which have been filed in the courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim could be deprived of their right to judicial protection. This extension might encourage discrimination victims to have recourse to the Ombudsman and could limit the number of potential cases before the courts, a procedure which is more time-consuming and costly.
- 3 Systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organisation for Mediation and Arbitration (*Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ*) of developments in employment and occupation, collective agreements, codes of ethics and practices in combating discrimination.
- 4 The creation, within the Economic and Social Council, of a permanent consultative body, composed of representatives of NGOs and organisations in general and with the participation of the Ombudsman, tasked with carrying out a social dialogue on equal treatment, together with the plenary body of the Economic and Social Council.
- 5 Given that social status was also included as a ground of discrimination in the new anti-discrimination law, Law 4446/2016, in 2017 the Ombudsman received reports by citizens who, although they appertained to the category of people living under extreme poverty conditions who needed income support, which could be provided through the Social Solidarity Income Programme, were excluded from joining it because they were unable to fulfil the admission criteria required for second-chance schools.

More specifically, Article 6 of the critical ministerial decision determines that beneficiaries of income allowance provided through the above programme, as well as

²⁴¹ Κουκούλη-Σπηλιωτοπούλου, Σ. (2014), *Μέτρα λιτότητας στην Ελλάδα και ανθρώπινα δικαιώματα*, ΕΔΚΑ 2014, σελ. 194 και επ. (Spiliotopoulou, S. (2014), 'Austerity measures in Greece and human rights: judgments of international bodies, EU Law and examples of Greek jurisprudence', *Review of social security law* 2014), pp. 173, 181, 182 and 189.

the other adult members of household, if they have not completed compulsory school attendance by the age of 45, 'are obliged to register with municipal second-chance schools or to annexes' while, according to Article 8 of the ministerial decision, not registering with a second-chance school leads to a deferment of the allowance already provided for these people. This regulation appears, at first, to have been intended to contribute to combating social exclusion and integrating or rehabilitating the programme's beneficiaries in labour market. However, in practice, it has excluded groups of people with specific race or colour characteristics, national or ethnic origins, genealogical derivations and familial or social situations, including where there is a Roma majority, with statistically high rates of dropout from school and illiteracy. This mainly constitutes illicit indirect discrimination.

There are two main reasons for the inability of a large number of right holders to register at second-chance schools. First, according to the current legislation, only adults who have completed primary education have the right to register at these schools. Not only have Roma citizens who live in provisional camps not completed primary education; they are also illiterate (or at least functionally illiterate). Secondly, even though some of them have a primary school leaving certificate, there are not enough student places at second-chance schools for the immediate registration of all those seeking them. As a result, this provision ultimately imposes an obligation that it is objectively impossible to fulfil.

The Ombudsman pointed this out to the Ministries of Labour and Education, highlighting that the programme constitutes a measure promoting the enjoyment of fundamental economic and social rights, which are undermined by extreme poverty. Of course, the Authority acknowledges that these rights can be subject to constraints in the service of public cause. However, such constraints must be relevant and indispensable to the fulfilment of that cause and not disproportionately burdensome for the beneficiaries. In a relevant intervention, the Ombudsman suggested:

- a. the total deletion of the aforementioned ministerial order's provision about registration at second-chance schools as a prerequisite to joining the Social Solidarity Income Programme;
- b. providing those have not completed compulsory education with extra motivation to register with a second-chance school;
- c. the cooperation of co-competent ministries to ensure that there are the proper number and types of places available, so that everyone wishing to register may do so without being impeded by a shortage of relevant places;
- d. the cooperation of co-competent ministries in order to provide preparatory registration classes for the existing education at level of second-chance schools for those who are interested;
- e. adequate information on how the people concerned may attend those classes, ensuring that the relevant information is provided for those who declare themselves illiterate (significant examples may be found in cases 235300, 235302 and 235303).

In addition, legislative amendments should be introduced in order to make the requirements for the legal standing of NGOs before the courts less strict.

12 LATEST DEVELOPMENTS IN 2019

12.1 Legislative amendments

- On 7 February 2019, Article 37 of Law 4590/2019²⁴² abolished Article 36 of Law 1943/1991,²⁴³ which stipulated that a public employee could not participate in a programme of post graduate education that would result in the improvement of his/her status within the hierarchy of the public administration if he/she had reached the age limit of 45. The age limit concerned specific programmes that were relevant to the needs of the specific position and would result in a different work status. In using the term 'post graduate education', legislators meant an educational level higher than a university diploma. The gaining of such an educational qualification matters for professional development within a public service, resulting in an improved salary. The problem arose when a Code of Employees was adopted in 1999, changing the age limit from 45 to 50. In the current Code of Employees, the age limit was removed altogether, as the relevant provision did not mention any such age limit. However, the initial provision was then codified in newer legislation, which resulted in the emergence of interpretative issues regarding the applicability of the age limit. This meant that the applicability of the age limit was uncertain and required interpretation by the national courts. The introduction of Law 4590/2019 put an end to this uncertainty.
- On 19 March 2019, the Greek Parliament passed Law 4604/2019,²⁴⁴ which includes a major change with regard to the equal treatment of Greek citizens in the field of public sector recruitment as far as ethnic origin is concerned. Specifically, Article 47(1) of the new Law abolished the requirement for a minimum period of one year from the awarding of citizenship through naturalisation before a person could be appointed to a public body or employed in a public sector position. This means that a discriminatory practice which targeted naturalised citizens, and which was contrary to the constitutionally established principles of equality and equal treatment irrespective of race, religion or national or ethnic origin, has finally been abolished. Under the previous legal framework, calls for recruitment to the public sector used to set a waiting period of at least one year (sometimes up to five years) from the acquisition of citizenship for interested citizens to be able to apply. This criterion had been applied to all recruitment processes for the public sector in accordance with the Public Employees Code (Law 3528/2007²⁴⁵ Article 4(4)) as well as the Municipal and Community Employees Code (Law 3584/2007²⁴⁶ Article 12(4)), which both stated that 'those who acquire Greek citizenship by naturalisation cannot be appointed as employees before the completion of one (1) year from its acquisition'. This law abolished the above provisions and ensures that the acquisition of Greek citizenship

²⁴² Law 4590/2019 on strengthening the Supreme Council for Personnel Selection, strengthening and upgrading the public administration and other provisions (*Νόμος 4590/2017 για ενδυνάμωση του Ανώτατου Συμβουλίου Επιλογής Προσωπικού, ενίσχυση και αναβάθμιση της δημόσιας διοίκησης και άλλες διατάξεις*) (OJ 17/07.02.2019).

²⁴³ Law 1943/1991 on the modernisation of planning, the functioning of public administration, the upgrading of its personnel and other relevant provisions (*Νόμος 1943/1991 'για τον εκσυγχρονισμό της οργάνωσης και της λειτουργίας της δημόσιας διοίκησης, την αναβάθμιση του προσωπικού της και άλλες συναφείς διατάξεις*) (OJ 50 A/11.04.1991).

²⁴⁴ Law 4604/2019 on promoting substantial gender equality, preventing and combating gender-based violence – Regulations for the granting of Citizenship – Provisions for Local Government elections – Other provisions of the Ministry of the Interior (*Νόμος 4604/2019 για την 'προώθηση της ουσιαστικής ισότητας των φύλων, πρόληψη και καταπολέμηση της έμφυλης βίας - Ρυθμίσεις για την απονομή Ιθαγένειας - Διατάξεις σχετικές με τις εκλογές στην Τοπική Αυτοδιοίκηση - Λοιπές διατάξεις*) (OJ 50 A/26.03.2019).

²⁴⁵ Law 3528/2007 on the ratification of the Code for the status of public employees and employees of legal entities under public law and other provisions (*Νόμος 3528/2007 'για την κύρωση του Κώδικα κατάστασης των δημοσίων πολιτικών υπαλλήλων και των υπαλλήλων νομικών προσώπων δημοσίου δικαίου και άλλες διατάξεις*) (OJ 26 A/09.02.2007).

²⁴⁶ Law 3584/2007 on the ratification of the Code for the status of municipal and communal employees (*Νόμος 3584/2007 'για την κύρωση του Κώδικα κατάστασης δημοτικών και κοινοτικών υπαλλήλων*) (OJ 143 A/28.06.2007).

equates with the enjoyment and exercise of the same rights, as upheld by the Greek Constitution. What is more, such discriminatory practices go against the principle of equal treatment as defined in Article 3(1) of the Equal Treatment Law (Law 4443/16).

12.2 Case law

Name of the court: Three-Member Misdemeanour Court of Thessaloniki

Date of decision: 17 April 2019

Name of the parties: Greek state and a doctor whose name is not revealed

Reference number: not available

Link: <https://racistcrimeswatch.wordpress.com/2019/04/18/3-54/>

Brief summary: A 14-month prison sentence, suspended for three years, was imposed by the second Three-Member Misdemeanour Court of Thessaloniki on a doctor who was charged because he had placed an antisemitic sign at a medical office allocated to him under a contract by the Municipality of Thermaikos, in the Nea Mihaniona area of Thessaloniki. The case, which revealed a discriminatory act in providing access to medical services, had been disclosed in March 2014, when the doctor, who was a member of the National Organisation for Health Services Provision, was arrested, after being accused and brought to court, having been caught 'in the act', which means that the act falls within the categories of crimes for which defendants should be brought before the prosecutor's office and then taken to court right away with no further deadline.

By examining his appeal against the judgment at first instance by the One-Member Misdemeanour Court, which had convicted him to a 16-month sentence, the Three-Member Misdemeanour Court confirmed that he was guilty of 'inciting racial discrimination' (and thus of violating Article 1 of the previous Anti-racism Law 927/1979), as well as of possessing weapons, due to the fact that knives were found in his residence. In his defence before the court, he claimed that there was a conspiracy against him, denying that he was the one who displayed the sign, which, according to the indictment, contained the phrase 'Jews are not welcome' written in German. The accused maintained his innocence, stating that someone else must have put up the sign without his knowledge. The claims of the accused were rejected by the court which convicted him, adopting the opinion of the public prosecutor.

Name of the equality body: Labour Inspectorate Body

Date of decision: 5 February 2019

Name of the parties: Leroy Merlin (a private company) and a claimant employee whose name is not revealed

Reference number: Not available

Link: <https://left.gr/news/gia-tin-apolysi-ergazomenis-me-sklirynsikata-plakas-prostimo-toy-sepe-sta-leroy-merlin>

Brief summary: On 5 February 2019, the Labour Inspectorate Body imposed a fine of EUR 8 000 on the company Leroy Merlin, at the suggestion of the Greek Ombudsman. The facts were the following. A private employee, having a contract of part-time employment for an indefinite period, was dismissed on 22 June 2018 by Leroy Merlin. On 26 June 2018, she submitted a complaint with the local department of the Labour Inspectorate Body, mentioning that she had been informed by the company that the dismissal was prompted by her (lack of) efficiency and highlighted that, although she had recrudescing multiple sclerosis – a fact that the company was aware of – her disease had not affect her work performance at all throughout all her working years. She added that, due to the treatment she endured in her workplace, which was described in her complaint, she suffered an attack of her disease, requiring her to be transferred to hospital by ambulance. She also stated that the incident was evidenced by adduced medical certificate.

The claimant employee, via her lawyer, declared that, since her disease had developed in 2011, in spite of the fact that she had repeatedly asked to transfer her work to a different office with different duties – in which she had already been successfully working before her

disease appeared – the company did not take this solution into consideration, not even on a trial basis. On 6 August 2018, the company deposited a statement before the Labour Inspectorate Body, mentioning that: ‘the employee was not treated unfavourably because of her alleged chronic disease ... the company made all the necessary efforts for a long time in order to maintain the employee in her workplace, despite her inefficiency ... and therefore it would not be possible to rehire her’. The Ombudsman, who also received a relevant complaint from the employee, asked the company to reconsider its decision to dismiss her.

Indeed, as the equality body monitoring and promoting implementation of the principle of equal treatment on different grounds of discrimination, including disability and chronic disease in the private, public and broader public sectors, the Ombudsman declared that he was at the disposal of the employer if the implementation of Article 5 of the anti-discrimination law, Law 4443/2016, which refers to reasonable accommodation for people who have a disability or chronic disease, should be regarded as appropriate by the company. The company refused to reconsider its decision. Therefore, the Ombudsman, in its Opinion 246643/51899/2018, recalled what the legislation stipulates in Article 5 of Law 4443/2016 by stating that an employer is obliged to take all necessary measures individually, so that people with disabilities may access a workplace, practise and get involved, as well as being able to participate in job training, so long as these measures do not entail a disproportionate burden for the employer (Article 5 of Law 4443/2016).

The Ombudsman also emphasised that taking or preserving special measures aiming to prevent or counterbalance disadvantages of disability or chronic disease does not constitute an act of discrimination. In fact, and especially as far as people who have a disability or chronic disease are concerned, constituting or preserving orders about health protection and safety in workplaces or measures aspiring to create or maintain prerequisites or facilitations to ensure or encourage their integration in employment and work does not constitute an act of discrimination (Article 7 of Law 4443/2016). Thus, the Ombudsman deemed that the termination of the employment contract on behalf of the employer infringed Article 2 of Law 4443/2016 and was therefore invalid. Taking the aforementioned into consideration, the Ombudsman conveyed its official opinion to the local department of the Labour Inspectorate Body and proposed the imposition of the provisioned administrative sanctions, based on Articles 11(2) and 20(4) of Law 4443/2016.

Name of the equality body: Three-Member Court of Misdemeanours of Aigio

Date of decision: 28 January 2019

Name of the parties: Defendant: The Greek Orthodox Bishop of Kalavryta

Civil Claimants: 9 individuals of the LGBT community

Reference number: Decisions Nos. 47 & 49/2019

Link: not available

Brief summary: In July 2017 the Greek Orthodox Bishop of Kalavryta was charged with the crime of public incitement to violence or hatred under Article 1 of Law 4285/2014 (the Anti-racism Law) in conjunction with Article 196 of the Greek Criminal Code, which provides an aggravated sentence for religious leaders. The charges were issued in relation to a blog post of a homophobic character that the religious leader had published online. In the blog post, the religious leader, through a series of homophobic slurs, called upon members of the Greek Orthodox community to resort to certain actions (namely spitting) in demonstration of their disapproval of homosexuals. The bishop was tried and acquitted of all charges on 15 March 2018, with the judge claiming that the content of the blog referred to politicians (i.e. MPs voting on the law for same-sex civil partnership agreements) and not homosexuals.

Following an application by the civil party, the Head Prosecutor of the First Instance Court of Aigio filed an appeal, which was substituted by an appeal by the Appeals Prosecutor of Patras. The appeal was examined by the appeals court, namely the Three-Member Court of Misdemeanours of Aigio. The decision at first instance was overturned and the bishop

was found guilty of committing both crimes (incitement to hatred and abusing his powers as a religious official in order to cause hostility). The Three Member Court of Misdemeanours of Aigio examined the key issues and interpreted a series of terms, including that of 'sexual orientation'. It stated that 'sexual orientation' refers to the characterisation of individuals based on their sexual orientation, which includes heterosexuals, homosexuals and bisexuals (individuals who resort to specific sexual acts or practices are excluded). The bishop was sentenced to a seven-month suspended prison term and was ordered to pay a fine of EUR 240. This decision is highly important as it is the first time a religious official has been condemned for hate speech targeting people based on their sexual orientation.²⁴⁷

12.3 Cases brought by Roma and Travellers

There were no relevant cases to report.

²⁴⁷ The bishop also filed an application for his case to be examined by the Supreme Court (Άρειος Πάγος), and it was examined on 28 January 2020, after the cut-off date for this report. This is the first time the Supreme Court will have examined such a case of hate speech.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Greece
Date: 31 December 2019

Title of the law: Law 4443/2016 'On the transposition of Directive 43/2000/EC on the application of the principle of equal treatment irrespective of race and ethnic origin, and the transposition of Directive 78/2000/EC on the configuration of the general framework of equal treatment in employment and work'

Abbreviation: Equal Treatment Law 4443/2016

Date of adoption: 02.12.2016

Latest relevant amendment: none

Entry into force: 09.12.2016

Web link: http://www.parliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=246e2286-a8e1-4283-95c0-a6b901169a95 (in Greek)

Grounds covered: racial or ethnic origin, descent, colour, language, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics

Civil/administrative/criminal law: Civil, administrative, criminal law

Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education

A) Public employment, private employment (as far as discrimination concerns grounds of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation).

B) Access to goods or services (including housing), social protection, social advantages, education (as far as discrimination concerns only grounds of ethnic or racial origin)

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body

Explicit non-discrimination legislation concerning prohibition of direct and indirect discrimination, harassment, instruction to discriminate and creation of equality bodies for the enforcement of equal treatment

Title of the law: Law 927/1979 on punishing acts or activities aiming at racial discrimination

Abbreviation: Anti-racist penal Law / Anti-racism Law 927/1979

Date of adoption: 22.06.1979

Latest relevant amendment: Law 1414/1984 and Law 4285/2014

Entry into force: 26.06.1979

Web link: <http://www.scribd.com/doc/99525792/%CE%9D-927-1979-%CE%A6%CE%95%CE%9A-139-1979-%CF%84%CE%B5%CF%8D%CF%87%CE%BF%CF%82-%CE%91-%CE%A0%CE%B5%CF%81%CE%B9-%CF%80%CF%81%CE%B1%CE%BE%CE%B5%CF%89%CE%BD-%CE%B7-%CE%B5%CE%BD%CE%B5%CF%81%CE%B3%CE%B5%CE%B9%CF%89%CE%BD-%CF%86%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%89%CE%BD-%CE%B4%CE%B9%CE%B1%CE%BA%CF%81%CE%B9%CF%83%CE%B5%CF%89%CE%BD>(in Greek)

Grounds covered: Race or ethnic origin, religion

Civil/administrative/criminal law: Criminal law

Material scope: General material scope

Principal content: Within the scope of this law, anyone who publicly, orally or in writing or through pictures or any other means, intentionally incites people to perform acts or carry out activities which may result in discrimination, hatred or violence against other persons or groups of persons on the sole ground of the latter's racial or ethnic origin or religion may be punished

Title of the law: Law 4285/2014 on amendment of 927/1979 and its adjustment to the decision-framework 2008/913/JHA of 28 November 2009,

for combating certain forms and manifestations of racism and xenophobia through criminal law and other provisions

Abbreviation: Anti-racism Law

Date of adoption: 09.09.2014 Latest relevant amendment: None

Entry into force: 10.09.2014

Web link: <http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/%20t-l328-pap.pdf>

Grounds covered: Racial or ethnic origin, religion or other beliefs, disability, sexual orientation

Civil/administrative/criminal law: criminal law

Material scope: general material scope

Principal content: The Anti-violence Law amends the previous Anti-racism Law 927/79 by specifically including all grounds of discrimination, except age. Article 10 of the law removes the last sentence of Paragraph 3 of Article 79 of the Penal Code, on aggravating circumstances for racist crimes and introduces Article 81A which increases the minimum penalties for misdemeanours and felonies committed due to hatred bias

Title of the law: Law 4356/2015 on civil partnership, exercise of rights, penal and other provisions

Abbreviation: None

Date of adoption: 24.12.2015

Latest relevant amendment: None

Entry into force: 24.12.2015

Weblink:

http://www.ministryofjustice.gr/site/Portals/0/uploaded_files/uploaded_15/N_4356.pdf

Grounds covered: Racial or ethnic origin, religion or belief, disability, age, sexual orientation, colour, descent and gender identity

Civil/administrative/criminal law: criminal law

Material scope: access to goods and services

Principal content: Law 4356/2015 introduced Article 29 of Law 4356/2015 which punishes perpetrators who treat others with contempt by refusing to provide them with services and goods based on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, sexual orientation, gender identity, or disability, thus expanding the grounds covered in the field of services and goods

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: Greece

Date: 31 December 2019

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	19.09.1974	20.09.1974	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	No	No	No, because Greece has not ratified the relevant Protocol	No, because Greece has not ratified the relevant Protocol
Revised European Social Charter	03.05.1996	20.01.2016	Yes ²⁴⁸	Ratified collective complaints protocol? Yes, the Protocol has been ratified.	No
International Covenant on Civil and Political Rights	16.12.1966	26.02.1997	Yes	Yes	Yes
Framework Convention for the Protection of National Minorities	22.09.1997	No	No	No, because Greece has not ratified the relevant Protocol	No
International Covenant on Economic, Social and Cultural Rights	19.12.1966	19.03.1985	No	No, because Greece has not ratified the relevant Protocol	Yes

²⁴⁸ The reservation concerns the teaching of the mother tongue of migrant workers who live legally in Greece.

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Elimination of All Forms of Racial Discrimination	07.03.1966	21.03.1970	No	No	Yes
ILO Convention No. 111 on Discrimination	25.06.1958	14.03.1984	No	No	Yes
Convention on the Rights of the Child	16.01.1990	02.12.1992	No	No, because Greece has not ratified the relevant Protocol	Yes
Convention on the Rights of Persons with Disabilities	30.03.1997	11.04.2012	Yes ²⁴⁹ (armed forces and law enforcement agencies)	No	Yes

²⁴⁹ According to Article 2 of this Law, the provisions of Article 27(1) of the Convention do not apply to the armed forces and law enforcement agencies with regard to differential treatment due to disability, as provided for in Article 8(4) of Law 3304/2005 on the implementation of equal treatment pursuant to Articles 3(4) and 4 of Directive 2000/78/EC.

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en.

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service: – by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls), – at the following standard number: +32 22999696, or – by email via: https://europa.eu/european-union/contact_en.

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en.

EU publications

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>.

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

